TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 262.

JAMES MAY, APPELLANT,

vs.

MARGUIRETE LE CLAIRE AND GEORGE L. DAVENPORT, EXECUTORS OF ANTOINE LE CLAIRE, DECEASED, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF IOWA.

FILED SEPTEMBER 30, 1869.

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1 UNITED STATES OF AMERICA, DISTRICT OF IOWA,
Circuit Court of the United States for the said District:

I, W. G. Woodward, clerk of the circuit court of the United States in & for the district of Iowa, hereby certify that the following attached bundle of papers consists of and is a full, true, & complete transcript of the papers & proceedings, the pleadings, exhibits, motions, & orders, transcripts of judgments, testimony, &c., filed & made in the cause of James May v. the executors of the will of Antoine Le Claire, deceased, and others, late pending in the said circuit court of the United States, as fully as they remain of record & on file in my office.

In testimony whereof I hereunto set my hand & affix the seal of
2 the said circuit court, at Des Moines, Iowa, this 6th day of June, A. D. 1868.

[SEAL] W. G. WOODWARD, *Clerk.*

3 Proceedings before the circuit court of the United States in & for the district of Iowa, at a term thereof begun & holden at Des Moines, Iowa, on the second Tuesday of May, A. D. 1868.

JAMES MAY
v.
MARGUERITE LE CLAIRE & GEORGE L. DAvenport, executors of the last will of Antoine Le Claire, deceased, & others.

Decree rendered at the May term, A. D. 1865, for respondents.

Now, be it remembered that on the 5th day of June, 1868, it then being still of the said May term, 1868, the said James May, the complainant, prayed an appeal to the Supreme Court of the United States in the above-entitled cause.

Whereupon the same being heard & understood by the court, the prayer of the said petitioner is granted & his appeal herein is
4 allowed in open court.

I, W. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, hereby certify that the foregoing is a full & true transcript of the proceedings & order of the court in the matter of the foregoing appeal.

Witness my hand & the seal of the said court, at Des Moines, Iowa, this the 6th day of June, A. D. 1868.

[SEAL.] W. G. WOODWARD, *Clerk.*

5 United States circuit court, district of Iowa.

JAMES MAY, COMPLAINANT,
vs.
MARGUIRETA LE CLAIRE & GEORGE L. DAvenport, executors of the last will & testament of Antoine Le Claire, dec'd, & Marguirete Le Claire, George L. Davenport, Louis C. Dessaint, John P. Cook, Ebenezer Cook, George B. Sargent, Marguirete Le Claire, Francis Le Clare, s'n'r, Francis Le Claire, j'n'r, Eulalia Le Claire, Antoine Le Claire, Henry Le Claire, Joseph Le Claire, David A, Le Claire, Antoine James Le Claire, Etienne Bienvenue, Stephen Bienvenue, Adaline He-
} I chancery.

bert, Leon La Parche, Ellen La Parche, Jerome La Parche, Frances Hebert, and infant heirs, David Napoleon Le Claire, George Le Claire, Antoinette Le Claire, Mary Le Claire, & Louis Le Claire, who appear by Gibson Brown, their guardian ad litem, defendants.

To the Hon. James M. Love, judge, &c.:

The petition of the above-named complainant, James May, for
6 the allowance of an appeal, respectfully shows that at the May term of the United States circuit court for the district of Iowa in the year 1865, and on or about the 8th day of June, 1865, a decree in the above-entitled action was rendered by said court, your honor holding said term, by which decree the original and amended bills of the complainant, as well as his bill of revivor, were dismissed with costs, and a final decree and judgment rendered herein in favour of the defendants and against the complainant, your petitioner, which said decree, as your petitioner is advised, and every part thereof, is erronious and ought to be reversed.

And your petitioner further shews that the matter in dispute and the amount in controversy in the action determined by such decree exceeds the sum of two thousand dollars exclusive of costs.

Therefore your petitioner (appellant) respectfully prays that an
7 appeal from said decree of said circuit court to the Supreme Court of the United States be allowed; and that the said decree, and all the papers & depositions on which the same was made and based, be sent to the Supreme Court of the United States, and filed with the clerk thereof, and that the said decree may be reversed, or that such other decree or order may be made by such Supreme Court of the United States as shall be agreeable to equity & good concience; and that the applelant may be returned to all things which he hath lost by said decree.

JAMES MAY.

Sworn to and subscribed before me this 5th June, 1868.

W. G. WOODWARD, *Clerk.*

The appeal is allowed as prayed for in the foregoing petition, in open court, this 5th June, 1868.

J. M. LOVE.

8 (Indorsed:) No. 25, eq. Petition for an appeal in equity case in circuit court, district of Iowa. James May vs. M. Le Claire & G. L. Davenport, executors of last will of A. Le Claire et al.
Filed June 5, 1868.

W. G. WOODWARD, *Clerk.*

9 No. 1.

United States of America, district of Iowa.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire & others. } In equity.

Appeal from the circuit court of the United States for the district of Iowa.

In obedience to the order of the court on the above appeal, I herewith transmit to the Supreme Court [herewith] transcripts of the various papers in the above cause, consisting of twelve parcels of papers, numbered from one to twelve, inclusive, consisting as follows:

Parcel No. 1.—Of the bill & amendment, answers, bill of revivor, &c.
" No. 2.—Affidavit for taking testimony, agreement, order, &c.
" No. 3.—Of plaintiff's exhibits.
" No. 4.—Of defendants' exhibits.
" No. 5.—Of defendants' exhibits, consisting of transcripts of divers judgments.
" No. 6.—Of motion for revivor, appointment of guardian ad litem,
10 & motions, &c., relating to the taking of testimony, &c.
Parcel No. 7.—Of def'ts' objections to depositions of Geo. A. Parker and others, John T. King, Geo. L. Davenport and others, & Margaret Le Claire, &c., and of pl't'ff's objections to parts of several depositions, &c.
" No. 8.—Of the depositions of Charles Powers, Margaret Le Claire, Annie Le Claire, & others, & motion to extend time, &c.
" No. 9.—Of the depositions of M. D. Snyder, Congdon, A. H. Davenport, & Geo. Wilson, &c.
" No. 10.—Of the depositions of Jos. A. Le Claire, Jas. Thorington, Nevins, Harrison, &c.
" No. 11.—Of the deposition of Louis C. Dessaint.
" No. 12.—Of the deposition of George L. Davenport.

The numbers of which parcels are marked at the top of the first page of each.

Witness my hand & the

In testimony of which I hereto set my hand & affix the seal of
11 the said circuit court this 10th day of January, A. D. 1867.

[SEAL.] W. G. WOODWARD, *Clerk.*

12 No. One.

United States of America, *District of Iowa:*

I, W. G. Woodward, clerk of the circuit court of the United States for the district of Iowa, hereby certify that the attached papers are a true & complete transcripts of the original & amended bills of complaint, with exhibits thereto, (in print,) of the will of A. Le Claire, of the respondents' answers, of an agreement between said Le Claire & said May, of the replications, of the bill of revivor & amendment, of respondents' exceptions to the bill and revivor, of the original writ, & of the transcript from the district court in the suit of James May v. Antoine Le Claire & others, as fully as they remain of record & on file in my office.

In testimony whereof I hereto set my hand & affix the seal of the said circuit court this the 10th day of January, A. D. 1867.

[SEAL] W. G. WOODWARD, *Clerk.*

United States district court, southern division Iowa.

JAMES MAY
vs.
MARGARET LE CLAIRE & GEORGE L. DAVENport, executors, & Margaret Le Claire, Frances Le Claire, & others, devisees of Antoine Le Claire, deceased. } Bill of revivor.

And now comes pl'ff, by his attorney, J. Williams, on this the 2nd day of June, being rule day, & moves this court that a guardian ad litem be appointed for David Napoleon Le Claire, George Le Claire, Louis Le Claire, Antoinette Le Claire, & Mary Le Claire, defendants in this cause, they being minors.

J. WILLIAMS, *Att'y for Pl'ff.*

(Indorsed:) Filed June 2, 1862.

J. C. BURNS, *Cl'k*,
By EDWARD MUMM, *Dep.*

13 In the district court of the United States for the district of Iowa, southern division.

JAMES MAY
versus
ANTOINE LE CLAIRE, LOUIS C. DESSAINT, Ebenezer Cook, George B. Sargent, John P. Cook, and George L. Davenport. }

Your orator James May, by leave of the court first had and obtained, amends his bill of revivor heretofore filed in this cause, or so much thereof as remains since the decree of the court sustaining exceptions to the same for impertinence, by inserting & adding as a part of said bill of revivor, to be inserted next to and after the words "citizens of the State of Iowa," in the second line from the bottom of page one of said bill of revivor, the following words & statements, to wit: "And that on the fifth day of August, 1861, your orator filed her bill amendatory of said original bill, & in which said original & amended bills it is, among other matters, represented & charged that prior to the year 1859 your orator & said Antoine Le Claire had been concerned in business transactions, in & on account of which said Le Claire had become largely indebted to your orator; and that on March 8th, 1859, said Le Claire & your orator signed a written agreement for the settlement & compromise of their respective claims, in which, among other matters, it is stipulated that your orator should by deed
14 convey to said Le Claire a parcel of land called Rose Bank, consisting of 143 acres of land, and should remove all incumbrances on the same within twelve months, and that said Le Claire, among other matters, should give your orator a good & sufficient deed & transfer of all her right, title, interest, and claim to all that part of his reserve at the head of the rapids, which he sold, or contracted to sell, to one Capt. A. H. Davenport, & that said Le Claire should also convey by deed to your orator certain lands he owned on an island about three miles below Le Claire, & for the land he owned on Iowa mainland, near said island."

Your orator further shows that said bill, among other matters,

charges said A. Le Claire & the other defendants in said bill named with and for acts of conspiracy and fraud perpetrated by them, with the intent & purpose to prevent, so far as they could, your orator from performing his part of said compromise contract, to be by him done & performed, and to release said Antoine Le Claire from his part of said contract by him to be performed, and for the general purpose of defrauding your orator out of his rights in the premises described in said original and amended bills, and said bills pray that your orator may be relieved touching the matters and things in said bills contained, as by the said bills duly filed & remaining of record in this honorable court appears.

April 5th, 1862.

LOWRIE & MILLER,
RANKEN & MILLER,
& JOSEPH WILLIAMS,
Att'ys for Pl'ff.

(Indorsed:) Filed April 5th, 1862.

J. C. BURNS, *Clk*,
By EDW'D MUMM, *Dep.*

15 *Chancery subpœna.*

UNITED STATES OF AMERICA,
District of Iowa, Southern Division, ss:

United States of America to Marguerite Le Claire & George L. Davenport, executors, and Marguerite Le Claire, Francis Le Claire, sen'r, Francis Le Claire, jr., Eulalie Le Claire, Antoine Le Claire, Henry Le Claire, & Joseph Le Claire, David A. Le Claire, Antoine James Le Claire, David Napoleon Le Claire, George Le Claire, Antoinette Le Claire, & Mary Le Claire, Louis Le Claire, Etienne Bienvenue, Stephen Bienvenue, Adeline Hebert, Leon La Perche, Ellen La Perche, & Jerome La Perche, & Francis Hebert, Marguerite Saucier, John Saucier, William Saucier, Etienne Saucier, & Antoinette Saucier, devisees of Antoine Le Claire, dec'd, greeting:

We command you and each of you that you appear before the judge of the district court of the United States for the district of Iowa, at Keokuk, in the southern division of said district, on the 1st Monday of March next, to answer the bill of revivor of James May, in his suit entitled James May vs. Antoine Le Claire & others, abated by the death of said Antoine Le Clare, this day filed in the clerk's office of said court at Keokuk, to show cause, if any you have, why the cause should not be revived, & then & there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshall of the district of Iowa.

Witness the Hon. James M. Love, judge of said court, at Keokuk, this 27th day of January, A. D. 1862, and of the independence the 86th year.

[L. S.]

J. C. BURNS, *Clerk*,
By EDW'D MUMM, *Dep.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Keokuk aforesaid, on or before the day to which the above writ is re-

16 turnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

J. C. BURNS, *Clerk.*
By EDW'D MUMM, *Dep.*

This writ came into my hands on the 27th day of Jan., 1862.

H. M. HOXIE, *U. S. Marshall,*
By H. FULTON, *Dep't.*

Served the within writ by reading the same to George A. Davenport & Margurite Le Claire, executors of Antoine Le Claire; also by leaving with each of them a true copy of the writ; also by reading slowly this writ to Joseph A. Le Claire, David A. Le Claire, David Napoleon Le Claire, George Le Claire, Louis Le Claire, Antoinette Le Claire, & Mary Le Claire; also by leaving with each of them a true copy of this writ, in the city of Davenport, the 6 day of February, 1862. No copy of petition demanded. The balance not found.

H. M. HOXIE, *U. S. Marshal,*
By H. FULTON, *Dep't.*

Marshal's fees.

Mileage	9 00
Serving	18 00
9 coppys	2 25
$29 25.	29 25

(Indorsed:) No. . Circuit court United States, district of Iowa. James May vs. Antoine Le Claire & Louis C. Dessaint & others. Chancery subpœna.

Returnable to rule day, first Monday in March, A. D. 1862.

J. C. BURNS, *Clerk,*
By EDW'D MUMM, *Dep't.*

Filed Feb'y 23d, A. D. 1862.

J. C. BURNS, *Clerk,*
By EDW'D MUMM, *Dep't.*

Lowrie & Miller, comp't's sol.

17 In the district court of the United States for the district of Iowa, southern division.

JAMES MAY
vs.
LOUIS C. DESSAINT, EBENEZER COOK, GEORGE B. Sargent, John P. Cook, & George L. Davenport, sued with Antoine Le Claire, late deceased. } In chancery.

The clerk of said court will issue a subpœna to revive said suit against the executors & devisees of said Antoine Le Claire, deceased, as follows:

Marguerite Le Claire, George L. Davenport, executors of Antoine Le Claire, dec.; Marguerite Le Claire, Francis Le Claire, sen'r, Francis Le Claire, jr., Eulalie Le Claire, Antoine Le Claire, & Henry Le Claire,

& Joseph Le Claire, David A. Le Claire, Antoine James Le Claire, Francis Napoleon Le Claire, George Le Claire, Antoinette Le Claire, & Mary Le Claire, Louis Le Claire, Etienne Bienvenue, & Stephen Bienvenue, Adeline Hebert, Leon La Perche, Ellen La Perche, & Jerome La Perche, & Francis Hebert, Margueritt Saucier, John Saucier, William Saucier, Etienne Saucier, & Antoinette Saucier, devisees of Antoine Le Claire, dec.

January 27th, A. D. 1862.

LOWRIE & MILLER,
& RANKEN & MILLER,
& JOSEPH WILLIAMS,
Solicitors for Pl'ff.

18 (Indorsed:) Filed Jan'y 27th, 1862.

J. C. BURNS, *Clk*,
By EDW'D MUMM, *Dep.*

19 In the district court of the United States for the district of Iowa, southern division.—In chancery sitting.

Before Hon. James M. Love, judge of said court.

Complaining shows unto your honor your orator James May, a resident of Rock Island County, in the State of Illinois, and a citizen of the State of Illinois, that on the fourth day of April, A. D. 1861, your orator exhibited his original bill of complaint in this honorable court against Antoine Le Claire, Louis C. Dessaint, Ebenezer Cook, George B. Sargent, John P. Cook, & George L. Davenport, of Scott County, Iowa, and citizens of the State of Iowa, of which the following is an exact copy, to wit:

20 "*Bill in chancery.*

"In district court of the United States for the district of Iowa, at Keokuk.

"JAMES MAY
vs.
"ANTOINE LE CLAIRE, LOUIS C. DESSAINT, EBENezer Cook, George B. Sargent, John P. Cook, and George L. Davenport.

"To the honorable judge of the district court of the United States for the district of Iowa, southern division, in chancery sitting:

"Your orator, James May, a resident of Rock Island County, in the State of Illinois, and a citizen of the State of Illinois, complains of Antoine Le Claire, Louis C. Dessaint, Ebenezer Cook, George B. Sargent, John P. Cook, and George L. Davenport, residents of Scott County, Iowa, and citizens of the State of Iowa, and for cause of complaint represents that prior to the year 1859 your orator and said Antoine Le Claire had been connected in business, as part of the original owners and proprietors of the cities of Davenport and Le Claire, in Scott County, Iowa; as part owners of the Half-breed Tract, in Lee County, Iowa; and by commercial and other transactions, out of and from which connections and transactions the said Antoine Le Claire had become largely indebted to your orator, but the precise amount of which your orator cannot name, because said transactions covered a period of over twenty years,

and he was never enabled to induce said Le Claire to come to a
21 settlement with him else than by way of compromise, as hereinafter shown, although your orator for the eight years immediately preceding said compromise, had repeatedly requested and urged him to do so; that in the early part of the year 1859 he was about to commence legal proceedings to enforce his claims and rights against said Le Claire, when said Le Claire met your orator and expressed a friendship for him on account of their old acquaintance and past associations, said he believed there was no occasion for your orator and him to go to law with each other, that he thought he and your orator could yet settle their affairs in an amicable way, if your orator would somewhat moderate and abate his claims, and very earnestly requested your orator to prepare and hand him a written proposition of the best terms your orator would be willing to grant him (Le Claire) for the purpose of settlement and compromise, your orator felt it to be his duty to comply with the request of said Le Claire; and, about three weeks after, it was made, prepared, and furnished said Le Claire, with such proposition subscribed by your orator, bearing date the 4th day of February, 1859, which contained terms for compromise much more favorable to said Le Claire than he was entitled to at law or in conscience, as your orator then and still believes, but which your orator thought it prudent to offer and suffer, even to his considerable loss, to secure an amicable adjustment and avoid the delay, expense, and harrassment of litigation and judicial proceedings.

"Your orator shows that said proposition met the approval of said Le Claire, who accepted the same as a settlement and compromise of the said difficulties between him and your orator, and who became a party thereto and legally bound thereby by his written agreement by him duly subscribed, bearing date the 8th day of March 1859, written on the same sheet containing your orator's said proposition, immediately following the proposition of your orator. The following is a copy of said proposition, to be considered as Exhibit A of this bill, to wit:

"'I will agree to compromise all matters in controversy or dispute between Antoine Le Claire, esq., and myself, if he will agree to the following proposition:

"'On my part I will agree to cancel my claim to what may be due or claimed by me from Mr. A. Le Claire of every kind, and will give him a clear deed for Rose Bank, with all the improvements on the 143 acres of land, I binding myself to pay within twelve months the incumbrance that is now on the Rose Bank farm.

"'Said Antoine Le Claire on his part to give up and release all claims he has of every kind on me, and to give me a good and sufficient deed and transfer of all his right, title, interest, and claim to all that part of his reserve at the head of the rapids which he sold or contracted to sell
to Captain A. H. Davenport, of Le Claire, he (A. Le Claire)
22 putting me in law and in fact in his place and stead, as if he had made a clear deed to me when he made the contract to sell to said A. H. Davenport, said Le Claire transferring to me all kinds of payments and securities that he has received from said A. H. Davenport; said Le Claire also to give me a good deed for the lands he owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland, near said island.

"'It will be the understanding, if we make an amicable compromise, as I propose, that I am to give Mr. Le Claire no unnecessary trouble in any compromises or settlements that may be necessary to make with said

A. H. Davenport, or others who have or may be purchasers of said land, but it is to be clearly understood that said Le Claire is to give me all the information, facility, and power he can to enable me to carry out, in good faith, all the conditions he has made up to this date with the said A. H. Davenport in the premises.

"'I do not consider the acceptance of this compromise, on the part of Mr. A. Le Claire, as his awarding to me all that I have a just right to claim, but I feel persuaded that Mr. Le Claire is under the erroneous impression that my claims are much less in equity and good conscience than they really are.

"'I will now prefer that we submit the matter as I proposed on the 26th ult. I have sanguine hopes that a fair, amicable adjustment would render me a more profitable award than I will get now by this proposition, and save me from a considerable amount of labor, care, and anxiety, that must devolve upon me if my friend Le Claire accepts this.

"'Davenport, Feb'y 4th, 1859.

(Signed) "'JAMES MAY.'

"The following is a copy of the writing and signature of said Le Claire, acceding and agreeing to said terms of compromise proposed by your orator, written on the same sheet and immediately following the same, as before stated, to wit:

"'I hereby agree to the foregoing proposition.

"'Davenport, March 8th, 1859.

(Signed) "'A. LE CLAIRE.'

"Your orator further shows that at the same time and place of said Le Claire signing said contract, your orator, under the said writing of said Le Claire, wrote his agreement to be bound by said proposition, of which the following is a true copy, to wit:

"'I hereby also agree to the above proposition.

"'Davenport, March 8th, 1859.

(Signed) "'JAMES MAY.'

"'Witness: JNO. P. COOK.

23 "Your orator, for explanation of the last paragraph of the said proposition, shows that on the 26th day of the month next previous to the date of said proposition, he had a conversation with said Le Claire in reference to their respective claims and differences, and proposed to said Le Claire that the whole matter should be submitted to the award of an impartial arbitration, but which proposal said Le Claire declined to accede to, and preferring that your orator should furnish him with a written statement of the terms on which your orator would be willing to settle and compromise with him.

"Your orator, for explanation of that part of said proposition which refers to the sale of said Le Claire to one A. H. Davenport, and the claims of said Le Claire on said Davenport and other matters connected therewith, shows that said Le Claire by his deed of date the 7th day of May, 1857, conveyed certain lands and lots in the said city of Le Claire to said A. H. Davenport, for the sum of $35,000 00, a copy of which deed and of its acknowledgment and of its certificate of record endorsed thereon, is hereunto annexed and made part of this bill, marked Exhibit B.

"Your orator further shows that said Davenport did not, in fact, pay for the premises described in said deed, but gave his note therefor, and

executed his mortgage of the same date of said deed and on the same premises described in said deed, to said Le Claire, to secure him in the prompt payments of the notes aforesaid, as will more fully and at large appear by reference to said notes and said mortgage, copies of which and also acknowledgment of said mortgage of the certificate of record endorsed thereon, are hereto attached as a part of this bill and marked Exhibit C, and placed respectively.

"Your orator further shows that after the execution and delivery of said notes and mortgage to said Le Claire as aforesaid, said Davenport placed in the hands of said Le Claire a large number of notes due him (said Davenport) from divers others parties, to be held by said Le Claire as further and collateral security for the payment of the notes executed by said Davenport as aforesaid, and of which a true list is hereunto annexed and made a part of this bill, marked Exhibit E.

"And your orator shows that the said mortgage, executed by said Davenport to said Le Claire, the notes secured by said mortgage, and the said notes placed as collateral security with said Le Claire, as is above shown, are the several instruments to be assigned and transferred to your orator by said Le Claire on account of or growing out of the said sale by said Le Claire to said Davenport, and which your orator was to receive, hold, possess, and enjoy the same, as is specified and provided for in said proposition.

"Your orator further shows that the following is a description of the tracts of land on the island and on the Iowa shore of the Mississippi River, referred to in said proposition as near as your orator
24 is at present enabled to ascertain the same, to wit, part of the E. ½ of sec. 8, T. No. 78 N., R. 5 E., of 5th principal meridian, beginning on the bank of the Mississippi River, where the north and south centre line of said section strikes the said river, at a bunch of sapling willows; thence N. 16 ch's and 61 links to a post in the territorial road running through said section; thence along said territorial road north 35° E. 4 ch's 77 l'ks to a post; thence N. 21½° E. 4 ch's to a post; thence N. 47° E. 3 ch's 80 l'ks to a post in the line of land conveyed to one H. G. Stone by one R. H. Spencer; thence S. along said line 14 ch's 79 l'ks to a red oak-stump, 4 rods west of a maple on the bank of said river, which said stump is the S. W. corner of the land of said Stone; thence E. 4 rods to a maple tree on the bank of said river; thence southwardly with the meanders of said river to the place of beginning, containing 20 61-100 acres of land, excepting therefrom about 8 75-100 acres of the same, included within the following lines, to wit: Beginning at a stake on the bank of the Mississippi River, 8 ch's 10 l'ks from S. E. corner of N. W. ¼ of said section 8; thence N. 16 ch's 40 links to a stake in the territorial road running through said section; thence north 53¼° east along said road 2 ch's 56 l'ks to a stake; thence S. 30° E. 12 ch's 32 l'ks to the bank of said river; thence with the meanders of said river to the place of beginning.

"Also part of the fraction south of the slough and on the island, in section No. 8, in the last above-described t'p, and R., described as follows, to wit: Commencing at meander post No. 9; thence N. 87½° W. 2 ch's 27 l'ks; thence S. 89° W. 1 ch. 92 links; thence S. 63° W. 2 ch's 5 l'ks; thence S. parallel with the section line across the island to the bank of the river; thence by the meanders of the river to meander post No. 10; thence N. along the section line to the place of beginning, containing 11 acres of land.

"Also part of the fraction S. of the slough on the island, in sec. 9 in same t'p and R., being all the land above and east of a north and south

line running across said island, and dividing said fraction into an equal number of acres on each side of said line, containing 15 acres more or less; all situated and being in Scott County, Iowa.

"Your orator further shows that these same parcels of land are of the value of $2,000 00, or thereabouts.

"Your orator further shows that the Rose Bank farm mentioned in said compromise agreement between your orator and said Le Claire, is situated in the immediate vicinity of Davenport, in Scott County, Iowa, and is described as follows, to wit: All of the S. E. ¼ of sec. No. 14, t'p 78 N., R. 3 east, of the 5th principal meridian, excepting 15 1-100 acres on west half of said quarter section, lying on the south side of a
25 stream running through said premises, called Duck Creek; that said premises are in a reasonable state of improvement and cultivation, and are, as your orator believes and admits were, in March, 1859, and are now, of the value of $12,000 00, or thereabouts.

"Your orator further shows that at the date of said compromise agreement between your orator and said Le Claire, to wit, on the 8th day of March, 1859, there was a mortgage incumbrance on 70 acres of said Rose Bank farm, on mortgage executed by your orator to George F. Kettell, of date the 1st day of November, 1856, conditioned to secure the payment of a promissory note executed by your orator to said Kettell, of same date of said mortgage, for $3,125 00, payable on the 1st day of November, 1857, with ten per cent. interest thereon after its maturity, as will more fully and at large appear by reference to said mortgage, a copy whereof, and of its due acknowledgment, is hereunto attached, as a part of this bill, marked Exhibit F.

"And your orator further shows that at the date of said compromise there was a trust-deed incumbrance on said Rose Bank farm, executed by your orator to one Charles Powers, of date the 1st day of May, 1857, conditioned to secure the payment of a promissory note, executed by your orator to Nicholas H. and Anthony T. Steppell, for the sum of six thousand five hundred and fifty dollars, bearing date the same day of said trust deed, and payable on the first day of May, 1858, with interest at ten per cent. per annum, and of which trust deed, and your orator's acknowledgment thereof, the following are true copies, to wit:

"'This indenture, made on the first day of May, A. D. 1857, between James May, of Davenport, Scott County, Iowa, of the first part, and Charles Powers, of the same place, of the second part, witnesseth that the said party of the first part, for the consideration of the sum of six thousand four hundred and fifty dollars, the receipt whereof is hereby acknowledged, does, by these presents, grant, bargain, sell, and convey unto the said party of the second part the following described tract of real estate, lying and being situated in the county of Scott and State of Iowa, to wit, the southeast quarter of section fourteen (14) in township seventy-eight (78) north, of range three (3) east, of fifth principal meridian, excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek, to have and to hold said premises above described, unto the said second party forever; and the said first party hereby covenants that said premises are free from any incumbrances, and that he has full power and authority to convey the same. In trust, however, for the following uses and purposes, and no other, to wit, the said James May having this day executed unto Nicholas H. and Anthony T. Steppell a promissory note for the sum of six thousand
26 five hundred and fifty dollars, payable on the first day of May, 1858, with interest at the rate of ten per cent. per annum. Now

the better to secure the payment of said note according to the tenure and effect thereof, the said party of the first part hereby conveys the premises aforesaid to the said Charles Powers, in trust for the security of the said payment, and in case the said James May shall fail or refuse to pay said note when due, then, and in that case, the said Powers, as trustee, shall be authorized to advertise said property in some newspaper printed in the county of Scott aforesaid, at least twenty days, and sell the same at public auction, at the court-house door in the city of Davenport, to the highest bidder in cash, in parcels and tracts of such size as the said Powers shall deem most advantageous for the said party of the first part, or so much thereof as shall be necessary to satisfy the amount then due, with costs and expenses of making such sale, and account for and pay over the balance of the proceeds (if any there be) to the party of the first part, his heirs, assigns, or representatives, on demand, and he, the said Powers, will be fully authorized and empowered to execute a deed in fee simple for the premises aforesaid, or so much thereof as he may sell, to the purchaser thereof, which deed will be absolute and prevent the said party of the first part, his heirs or assigns, forever, ever setting up any claim thereto, either in law or equity. The said party of the first part further stipulates, directs, and agrees, that in the case of the death, incapacity, or refusal of the said Charles Powers to act, then, and in that case, the acting judge of the county court of Scott County is hereby authorized and requested to appoint a suitable person to act as trustee, and any person so appointed shall be clothed with all the power and authority to act that is herein given to the said Powers. In testimony whereof, the said party of the first part has hereunto set his hand and seal the date first above written.

(Signed) "'JAMES MAY. [s. s.]

"'STATE OF IOWA, *Scott County, ss:*

"'Be it remembered that on the second day of May, A. D. 1857, before the undersigned, a justice of the peace in and for said county, personally appeared James May, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

"'Witness my hand the day and year above written.

(Signed) "'R. D. CONGDON,

"'*Justice of the Peace.*'

27 "And your orator further shows that by and in pursuance of his said compromise agreement with said Le Claire, he delivered to said Le Claire, and the said Le Claire then and there received and accepted the possession of said Rose Bank farm, and from thence hitherto hath held, possessed, and enjoyed the same as of his own right and property.

"And your orator further shows that he executed a deed for said Rose Bank farm to said Le Claire; and, by a verbal arrangement between him and said Le Claire, he, on or about the 10th day of March, 1859, deposited said deed with Cook & Sargent, bankers, of Davenport, Iowa, and at the same time said Le Claire endorsed the notes of said Davenport, without recourse, to your orator, and deposited them and the said mortgage of said Davenport, and the said notes placed in the hands of said Le Claire by said Davenport, for collateral security as before stated, with said Cook & Sargent, with the intent and understanding that said deed should be delivered to said Le Claire, and the said mortgage and notes should be delivered to your orator when your orator should have

released and removed the incumbrances from said Rose Bank farm, as provided for by said compromise arrangement and agreement.

"Your orator is informed and believes, and so charges the truth to be, that said firm of Cook & Sargent consisted of the said defendants Ebenezer Cook, John P. Cook, and George B. Sargent.

"Your orator further shows that shortly after his said compromise engagement with said Le Claire, he commenced making arrangements to have the incumbrances existing against said Rose Bank farm removed therefrom; especially the said mortgage and trust deed liens which were not under the immediate control of your orator on account of their large amounts. Your orator had an interview with said Charles Powrs, the trustee in said deed of trust, and who controlled its enforcement, and also the collection of the said mortgage claim, who gave your orator to understand and believe he would lend his influence and assistance, so far as he could, to your orator, in your orator's efforts to raise money to remove the incumbrances from said farm, and he assured your orator that in the mean time he would not enforce a sale on said trust deed.

"Your orator had large amounts of real estate in said county of Scott, besides said Rose Bank farm, beside credits and sums of money due him, and he had large and valuable landed possessions in Illinois, Pennsylvania, and other States, but such was the crippled condition of the money market in the West during the early part of the year 1859, following the commercial revulsion of 1857–'8, that he found he could not raise the money needed for the purpose aforesaid, and concluded to go to Pittsburgh, Pennsylvania, where he had formerly resided, and where he felt very confident he would be enabled to raise the money needed to remove said incumbrance.

"Your orator found a party in Pittsburgh who was willing to
28 advance the money necessary to pay and remove the said trust-deed and mortgage incumbrances, and your orator made an engagement with him, which would, in the month of July, 1859, have secured the payment of said incumbrances, but for the inequitable interference and fraudulent conduct of said Le Claire and the other defendants to this suit, especially of the defendant John P. Cook, an attorney and counselor at law, of Davenport, Iowa, and acting in the premises as the attorney and counselor of said Le Claire. Your orator shows that said Le Claire and his said attorney and the other said defendants and confederates of said Le Claire had formed the inequitable and erroneous opinion that if they could procure a sale of said Rose Bank farm, under said trust deed to said Powers, and get the control of the title thereto, and prevent your orator from redeeming therefrom, he would be barred and cut off from each and every right and benefit secured to him by his said settlement and compromise with said Le Claire, and that said Le Claire would be thereby acquitted, released, and discharged of all his liabilities and indebtedness to your orator forever.

"Your orator shows that said John P. Cook, acting in confederacy with said Le Claire and the other defendants in this suit, called upon said Charles Powers, then a resident and banker in and of said city of Davenport, in Scott County, Iowa, and by his pursuasion and influence, and the influence of said Le Claire and the other defendants to this suit, induced said Powers to advertise for the enforcement of said trust deed whilst your orator was at Pittsburgh for the purpose hereinbefore shown, as will more fully and at large appear by reference to said advertisement, a copy of which, and of the proof of its publication, is hereto annexed, and made a part of this bill, marked Exhibit G.

"Your orator further shows that at or about the time the said advertisement bears date, (for your orator does not know on what particular day it was written,) your orator met said Charles Powers in said city of Pittsburgh, and who then and there conversed with your orator in reference to said trust-deed and mortgage incumbrances on said Rose Bank farm, and desired your orator to pay said trust-deed incumbrance, but gave your orator no information that he had ordered an advertisement for the sale and enforcement of the same; but being informed by your orator of the negotiations then pending, by which your orator expected shortly to procure money to pay and remove said incumbrances, he gave your orator distinct and special assurance, and promised that no foreclosure or sale should be made of said premises.

"Your orator further shows that after said Charles Powers had returned from Pittsburgh, where he had seen your orator, as is hereinbefore stated, to his home in Davenport, Iowa, said John P. Cook
29 called upon him and requested and urged said Powers not to have or influence any bidders to come to the sale of said Rose Bank farm, to be made in the enforcement of said trust deed, and that he or said defendant Louis C. Dessaint would be present to bid on said property, and that in case the said property was sold to said Dessaint, that he, Cook, would see that the money was paid on such bid, and that, if said Dessaint or himself should become the purchaser of said premises at such sale, he, Cook, would see that the whole amount of the trust-deed claim should be paid off, as also that of the said mortgage incumbrance, which said Powers represented, and which was prior in its lien to that of said trust-deed; and thereupon it was agreed by and between said Charles Powers and said John P. Cook that, in case said John P. Cook or said Dessaint should become the purchaser under said trust-deed sale, that said Cook should liquidate and satisfy the whole amount due on said trust deed and said mortgage.

"And your orator further shows that he went to Davenport with his friend from Pittsburgh, before referred to, on the day previous to the date fixed for the sale of said farm, as designated in the advertisement of said Charles Powers as aforesaid, with means to pay the amount due on both said trust-deed and mortgage incumbrances, and that his object in going there at that time was for the purpose of paying and discharging these two said incumbraces; that your orator immediately, or very soon after his said arrival, called on said Le Claire and informed him he had come prepared to pay said trust-deed and mortgage claims, and wished to know of him, Le Claire, whether he, Le Claire, would then give up to your orator the said Davenport mortgage and notes if your orator would give him satisfactory security or indemnity for the payment of certain judgment incumbrances on said Rose Bank farm within the time specified by the said compromise agreement.

"Your orator could have readily furnished such security to said Le Claire, and was anxious to be permitted to do so, and get possession of the Davenport mortgage and notes, to be enabled to take such action in the premises as his interests might have required; but said Le Claire declined to give any answer in the premises, except to refer your orator to said John P. Cook, who, he said, was his agent who had charge of the matter and through whom alone your orator could make arrangements.

"Your orator further shows that the means he had provided for the payment of said trust-deed and mortgage incumbrances were approved bankers' drafts, and which your orator supposed would be readily accepted by said Powers in payment of said incumbrances; and that on the day designated and near the hour designated by the said trust-deed

advertisement for the sale of said farm, he and his said friend
30 from Pittsburgh called at the office of said Powers to pay said incumbrances, when said Powers informed your orator and his said friend that said drafts would be satisfactory for the payment of the same, and that said sale should not take place. Your orator then commenced a conversation and negotiation with said Powers for the purpose of inducing him to assist your orator with means, on securities to be furnished by your orator, for the purpose of paying certain judgment incumbrances on said Rose Bank farm, amounting to $3,500 00, or thereabouts, and whilst your orator and said Powers were conversing on this latter subject, a note or writing was handed to said Powers, who immediately informed your orator that he was called out on other business for a short period, and that your orator would have to excuse his absence, or words to that effect and purport. Your orator was not aware nor informed of the purport of that note, nor did he know from whence it came; and as he had no positive information then of the dishonest confederacy which had been formed to defraud him in the premises, as aforesaid, he did not so much as suspect that said Powers, acting under the corrupt and wicked influence of said John P. Cook, had, at the instance of said Cook, withdrawn from the company of your orator to sell said farm to said Cook, or said defendant Louis C. Dessaint, and left your orator remaining in his office, ignorant of his wicked and fraudulent design, as subsequent events proved his said departure and withdrawal to have been.

"Your orator shows that it was about two o'clock p. m. when said Powers left his said office as aforesaid, and your orator supposed that he would shortly, or in the course of the same afternoon, return thereto, when your orator could, as he intended to, discharge said trust-deed and mortgage incumbrances, in preparation and agreement with said Charles Powers as aforesaid. And your orator was exceedingly astonished when, in the course of an hour, or thereabouts, after said Powers had parted with your orator as aforesaid, to learn from a citizen of Davenport that said Powers had sold, or pretended to sell, said Rose Bank farm to said defendant Louis C. Dessaint, in the pretended enforcement of said trust deed. Your orator shows that the note or writing above referred to as being received by said Powers whilst he was in his office in conversation with your orator as aforesaid was sent by said John P. Cook, attorney and agent for said Antoine Le Claire as aforesaid, and acting as attorney and agent for said Le Claire, and was written and sent for the purpose of inducing said Powers to withdraw clandestinely from the company of your orator, and have him sell said Rose Bank farm to himself or said Louis C. Dessaint, for the use and benefit of said Le Claire; and that, upon receiving said note, said Charles Powers went directly and immediately to the office of said John P. Cook, who had a horse
31 and buggy, in front of his office, ready prepared in advance, to conduct himself and said Powers to the court-house, where said farm was advertised to be sold, as is shown by said advertisement, and that as soon as said Powers got to the office of said Cook, they, said Cook and Powers, got into the said buggy and drove to the said court-house, where and when said Powers offered said farm for sale on the terms,—

"First. That the property would be sold subject to a prior mortgage incumbrance owned by Kettell, amounting to about $3,300 00.

"Second. That bidders would have the privilege of bidding upon any part or parts of the property.

"Third. That if there were no bidders for parts, it would be sold in a body as a whole.

"Fourth. The sale would be for cash, to the highest bidder.

"Fifth. That unless the cash was paid at the office of said Powers, in Davenport, before 5 o'clock of that afternoon, he reserved to himself the right of considering the highest bid void, and of making the deed to the next highest bidder who should pay the cash, and who he should consider the higest bona-fide bidder.

"Your orator shows that so stealthily and fraudulently had the plan been arranged and was conducted by the agents and attorneys of said Le Claire, and by his co-operation and confederacy, and the co-operation and confederacy of each and all the defendants to this suit, to effect sale of said property and secure the purchase of it to some one of the confederates or attorneys of said Le Claire, that no persons were there to bid on said property, nor did any person bid on the same except said Louis C. Dessaint and said John P. Cook, the said Louis C. Dessaint being the highest bidder for $5,000 00, and the said John P. Cook bidding one or two hundred dollars below, and thereupon said Charles Powers declared he struck off said property to said Louis C. Dessaint.

"And your orator shows that, for the purpose of the execution of said pretended sale, the said John P. Cook, on the same day of said sale, prepared a deed conveying said farm from said Charles Powers, as trustee as aforesaid, to said Louis C. Dessaint, and on the same day executed and acknowledged the same and delivered the same to said John P. Cook. And your orator files herewith a copy of said deed and of the acknowledgment thereof, both bearing date the date of said pretended sale, to wit, the 20th day of July, 1859, as parts of this bill, marked Exhibit H.

"Your orator further shows that not on the day of said pretended sale, but the day thereafter, to wit, on the 21st day of July, 1859, said John P. Cook, and not said Dessaint, the said pretended purchaser of said farm, called on said Powers and paid him the said bid of $5,000 00, not, however, in cash, as it had been announced by said Powers the
32 sale was to be, but in a check for currency, banknotes, and a certificate of deposit by said firm of Cook & Sargent, of which firm said John P. Cook was then a member, and the said John P. Cook did then and there also pay said Powers the balance due on said trust-deed incumbrance, amounting in all (inclusive of the $5,000 00 bid on said farm as aforesaid) to the sum of $7,440 00.

"And your orator further shows that, at or about the time of said payment, said John P. Cook delivered to said Charles Powers his promissory note, endorsed by said Antoine Le Claire and the defendant Ebenezer Cook, who is a brother of said John P. Cook, in payment of said Kettell mortgage, and said Powers assigned or procured the same to be assigned and delivered to said John P. Cook.

"And your orator represents and charges the truth to be, that each and all of said acts and conduct of said Le Claire and his said attorney and confederates, as is hereinbefore shown and set forth, relative to the advertisement for the sale of said farm and the fraudulent matter connected with said sale, was intended and done by said Le Claire and his said attorney and confederate defendants for the purpose and object of making the consummation of the said compromise contract between your orator and said Le Claire impossible on the part of your said orator and thereby enable them to defraud your orator out of the sum of $26,000 00, or thereabouts, which was about the amount due your orator under said compromise after deduction from the Adrian H. Davenport notes and mortgage and the value of the land to be conveyed by

said Le Claire to your orator, the said Rose Bank farm assessed at the value of $12,000 00, or thereabouts.

"Your orator further shows that after he had discovered the fraudulent attempt which had been made by said Le Claire and his said attorney and confederates to hinder and prevent him from performing his agreements to be performed by the terms of said compromise between him and said Le Claire, as aforesaid, he felt it to be his duty to put the public at large on their guard against the character of the pretended claim of title to said Rose Bank farm, held in the name of said Dessaint, and accordingly he signed and acknowledged a notice bearing date the 26th day of July, 1859, and had it recorded in the recorder's office of Scott County, Iowa, on the same day, warning all persons against accepting a deed for said Rose Bank farm from said Dessaint for reasons in said notice contained, a copy of which notice, of its acknowledgment, and of its certificate of record, is herewith filed as a part of this bill, marked Exhibit I.

"Your orator further shows, and avers it to be true, that said Dessaint did not, in fact, pay anything on account of his said pretended purchase,
and that his name had been used by said John P. Cook as attorney
33 and agent of said Le Claire, for no further or other purpose than as an instrument through whom the said pretended title and purchase under said trust-deed sale could be, as it were, under cloak and cover transferred to the order of said Le Claire and his said attorney and confederate defendants in this suit. And your orator shows that on the next day after your orator had filed for record his notice contained in Exhibit I, in this bill described and made a part thereof, as aforesaid, the said Louis C. Dessaint, at the instance of said John P. Cook, agent and attorney of said Le Claire, as aforesaid, but without any consideration paid him whatever, transferred and conveyed his pretended title and interest in said Rose Bank farm by deed, without covenants for warranty of any sort, to said Ebenezer Cook, one of said firm of Cook & Sargent, and brother of said John P. Cook as aforesaid. And your orator files herewith a copy of said deed and of its acknowledgment, both bearing date the 27th day of July, 1859, as a part of this bill, marked Exhibit J.

"Your orator further shows that at or about the 20th day of December, 1859, the said firm of Cook & Sargent became insolvent and failed in business, and that a few days prior thereto, to wit, on or about the 16th day of December, 1859, said Ebenezer Cook, by deed bearing date the said 16th day of December, 1859, transferred and conveyed his right and interest in said Rose Bank farm to said defendant George L. Davenport, as will more fully and at large appear by reference to said deed and the acknowledgment thereof, copies of which are hereunto annexed as part of this bill, marked Exhibit K.

"Your orator is not informed of what, if any, consideration passed from said George L. Davenport for the conveyance of said farm to him as aforesaid, but your orator is informed and believes, and so charges the truth to be, that whatever, if any, consideration was given for such conveyance, was for and on account of an indebtedness of said firm of Cook & Sargent, of which said Ebenezer Cook and John P. Cook were members, or for and on account of liabilities assumed by said George L. Davenport for said Cook & Sargent, and from and on account of which he has as yet suffered no loss nor damage. And your orator charges that if indeed said George L. Davenport did, in fact, pay the consideration for said farm which is mentioned in said deed, that he ought not to be allowed to hold or enjoy the title thereto, because the said sale by said

Charles Powers was not made in accordance with law, as will be hereinafter specially shown and set forth, and because said George L. Davenport, before and at the time said conveyance was made to him, and before he agreed to accept the same, had full knowledge and information of the fraudulent practices hereinbefore related which led to, and under which the pretended sale under said trust deed was perpetrated and consummated.

34 "And your orator further shows that in a few days after said George L. Davenport received said conveyance, at the instance of said John P. Cook, as agent and attorney of said Le Claire, he filed his petition in the district court of Scott County, Iowa, claiming title in said Rose Bank farm in himself, under and by virtue of said trust-deed sale and conveyance to said Dessaint, the conveyance from said Dessaint to said Ebenezer Cook, and the conveyance from said Ebenezer Cook to himself, said George L. Davenport, and praying, among other things, that his claim of title under said sale and conveyance should, on hearing by the said court, be declared valid, and that your orator might be decreed to convey to him, said Davenport, your orator's claim and title to said land, and for other and further relief; all of which will more fully and at large appear by reference to said petition, a copy of which (not for the purpose of evidence of the truth of its several averments therein contained and the fact of existence) is hereto filed as an exhibit in this suit, marked Exhibit L.

"You orator further shows that afterwards, to wit, on the 20th day of January, 1860, your orator took the deposition of said Charles Powers in due form of law, to be used by him in his defence to said suit of said George L. Davenport, and which, as your orator is informed by his counsel and believes to be true, fully shows that said trust-deed sale was not conducted according to law, as also the fraudulent conduct of said Le Claire, through his said agent and attorney John P. Cook, perpetrated as hereinbefore shown, to prevent your orator from removing the incumbrances from said Rose Bank farm, a printed copy of which deposition is hereto attached and made a part of this bill and marked Exhibit M.

"Your orator further shows that about fifteen days after the date of said deposition said Charles Powers died, and that at the next subsequent term of said district court of Scott County, Iowa, after the death of said Powers, said George L. Davenport dismisses his said petition and suit.

"Your orator believes and charges said suit was dismissed for the purpose, and in the belief of said George L. Davenport and his counselor and solicitors therein, that such dismissal would render said deposition null as a matter of proof in favor of your orator in any future suit which might be prosecuted between your orator and George L. Davenport relative to the validity of said trust-deed sale and the ownership of said Rose Bank farm, but your orator claims, that under the special circumstances of this case, that said deposition should be allowed as proof for your orator in this suit, so far as the same is or may be found to be relevant and material to the issues herein pending and to be formed under this bill and the subsequent pleadings hereto.

35 "Your orator further shows that, notwithstanding the irregular and fraudulent character of said trust-deed sale, your orator is now, and ever has been since said sale, willing and anxious to be permitted to pay the amounts due, inclusive of interests and said mortgage and trust-deed incumbrances, on said Rose Bank farm, but that said Dessaint, during the brief time he held his said conveyance, and the said Ebenezer Cook, during the period he held his conveyance to said farm, each for

said respective terms, inequitably claimed the title to said land, and refused to allow your orator to redeem therefrom, and your orator shows that said George L. Davenport now claims, or pretends to claim, he is the owner of said lands, and denies your orator has any right or equity in the same whatsoever.

"Your orator further shows that after said Le Claire and his confederate defendants in this suit, and his said agent and attorney John P. Cook, had succeeded, as they supposed, in defrauding your orator out of the ability and opportunity of discharging the incumbrance on said Rose Bank farm, according to his agreement in said settlement and compromise arrangement, to wit, on the 9th day of March, 1860, and after the termination of the year designated by said compromise arrangement within which your orator agreed to discharge the incumbrances on said Rose Bank farm, said Antoine Le Claire sent your orator a written notice, copying the said compromise arrangement in full, and informing your orator that if your orator would remove all the incumbrances on said Rose Bank farm, and give him a good deed therefor, he, said Le Claire, was willing to, and would, upon such performance of your orator, execute the agreements and things by him stipulated to be done and performed in said compromise arrangements, as will more fully and at large appear by reference to said notice, a copy of which is hereto attached and made a part of this bill, marked Exhibit N.

"Your orator further shows that notwithstanding said John P. Cook, in his said negotiations with said Charles Powers to induce him to so conduct said trust-deed sale as to permit him, said Cook, or said defendant Dessaint, to become the purchaser of said Rose Bank farm, in exclusion of all other persons, agreed with said Powers to pay the whole amount due on said trust-deed and mortgage incumbrances; and notwithstanding it was expressly stipulated by said Powers, at the time and place of said sale, as a part of the terms of said sale, that the said sale should be made subject to the said mortgage incumbrances hereinbefore described, yet the said John P. Cook now claims and pretends that said trust-deed sale did not include the said mortgage incumbrance so as to discharge your orator from personal liability to pay the same, and has, in fact, commenced suit against your orator in the State of Illinois on the note named in and secured by said mortgage, for the purpose of obtaining judgment thereon, and collecting the same by legal process out of property of your orator in said State of Illinois.

36 "Your orator further shows that at the time he executed said trust deed, real estate commanded a much higher price and readier sale at said city of Davenport and in its vicinity than it does at present; that said Rose Bank farm lay within one-half mile only from the corporation limits of said city of Davenport, and as said city was at that time growing exceedingly fast in the direction of said farm, your orator believing, that if from any untoward misfortune of your orator, said land should be made subject to sale under the powers to be inserted in said trust deed, that by dividing it into tracts and parcels, such as 2, 3, 4, 5, 10, and 15 acre lots, &c., a small portion of said land would pay the said debt intended there to be secured, and accordingly your orator had it expressly provided in said trust deed that in case of sale under said trust deed, and the said land should be sold "for cash in parcels and tracts of such size as the said Powers shall deem most advantageous for said party of the first part, or so much thereof as shall be necessary to satisfy the amount then due, with costs and expenses of making such sale."

"And your orator represents, and so charges the truth to be, that said

Charles Powers did not plot or survey said land into tracts and parcels, nor did he offer it for sale in tracts and parcels, according to the powers vested in him by the express terms of said trust deed, but in total disregard of the plain and explicit provisions of said trust deed, and of the rights of your orator in the premises, he offered said land in mass, with the option of the bidder to bid for less than the whole amount if he chose to do so, as hereinbefore has been shown and specifically stated.

"And your orator claims that the manner of said sale was not authorized by the terms of the said trust, either of the letter or its spirit, but in violation of both, and, because thereof, said sale ought to be declared null and void for all purposes whatever.

"Your orator further represents and avers that he would faithfully have removed the incumbrances on said farm, and have performed each and all of the agreements to be by him done and performed under said compromise agreement, but for the inequitable conduct and interferences of said Le Claire and John P. Cook in procuring a sale of said farm, as hereinbefore is related; and if your orator can have the privilege of redeeming said land, by paying the amount due on said trust-deed and mortgage incumbrances, he is still willing, and tenders a redemption of the same from all incumbrances, and a conveyance of said lands to said Le Claire, as provided for in said compromise contract; or if on the hearing of the case, it shall be the opinion of the court that said trust-deed sale was good in law and equity, or if irregular and fraudulent and void as against said Dessaint and John P. Cook, that the title of
37 said George L. Davenport is good, as an innocent purchaser without notice of such irregularities and frauds, then your orator is willing and proffers to allow said Le Claire the value of said farm as it was on the 8th day of March, 1859, or as the court shall prescribe to be paid by your orator to said Le Claire, or to be deducted from the notes of said Adrian H. Davenport to be delivered to your orator, as hereinbefore is shown, as the very right and equity of the case, under the rulings of this court, shall require.

"Your orator shows and claims that the true object and meaning of said settlement or compromise agreement was and is, that said Le Claire was and is indebted to your orator in the amount due on the said Adrian H. Davenport notes and mortgage and the said parcels of land lying near the said city of Le Claire, less the value of said Rose Bank farm; that if, from any accident or untoward cause, said Le Claire should prove unable to transfer said mortgage and notes or said parcels of land, he is, and should be, responsible for the value thereof, and in like manner, if it is out of the power of your orator to perform any portion of his agreement, that he should make compensation therefor.

"Your orator therefore makes said Antoine Le Claire, John P. Cook, Ebenezer Cook, George B. Sargent, George L. Davenport, and Louis C. Dessaint parties defendants to this bill, and requires of each of them that he answers specifically and directly, on his corporal oath, to each and all the several matters and things hereinbefore set forth, referred to, charged, and contained, and your orator prays that, on the hearing of this cause, it may be adjudged and decreed that said Antoine Le Claire be required and enjoined to transfer and convey to your orator the said Adrian H. Davenport's notes and mortgage, and the said parcels of land lying near the said city of Le Claire, in said compromise arrangement referred to; that said John P. Cook, Ebenezer Cook and George B. Sargent, in whose possession said mortgage and notes are, and as hereinbefore shown, be required and enjoined to deliver the same to your ora-

tor, to be held by your orator as if his own right and property; that the said trust-deed sale be decreed null and void, and said John P. Cook, Louis C. Dessaint, Ebenezer Cook, and George L. Davenport, and each of them, be enjoined and prohibited from setting up any claim on or title to said Rose Bank farm, for or on account of such sale forever; that your orator may be permitted to pay the amounts due on said trust-deed and mortgage incumbrances to said John P. Cook, or whoever may be found entitled thereto, and that when your orator shall have paid those incumbrances and all other incumbrances on said farm on said 8th day of March, 1859, that said John P. Cook, Ebenezer Cook, and George B. Sargent be required to deliver to said Le Claire the said deed of your orator, conveying said farm to said Le Claire, which was deposited
38 with said firm of Cook & Sargent, as is hereinbefore shown, and if the court should be of the opinion that, from any cause whatever, said George L. Davenport is become the owner of said Rose Bank farm, then, and upon that event, your orator prays he may be allowed to make compensation to said Le Claire for the value of said farm as the value was at the date of said compromise agreement, and to be paid in cash by your orator to said Le Claire, or to be deducted from the amount of the said Adrian H. Davenport's notes, as equity may interpose and prescribe, and that, if the title to said farm shall prove to be vested in said George L. Davenport, the said John P. Cook be required to abstain from the further prosecution of his suit for the collection of the note he procured from said Charles Powers as aforesaid, and be enjoined to file said note in the clerk's office of this court, to be cancelled and destroyed, and for such other and further relief as equity and good conscience may require.

(Signed) "LOWRIE & MILLER,
"RANKEN & MILLER,
"*Solicitors for Plaintiff.*

"JUNE 19TH, 1860.

"EXHIBIT B.

"This indenture, made this 7th day of May, A. D. 1857, between Antoine Le Claire and Margaret Le Claire, his wife, of the city of Davenport and the county of Scott, in the State of Iowa, parties of the first part, and Adrian H. Davenport, of the city of Le Claire, in the county and State aforesaid, party of the second part, witnesseth that whereas said Antoine Le Claire, party of the first part, is the owner of certain lots and parcels of land in the city of Le Claire aforesaid, situated in what is known as Le Claire's reserve, at the head of the Rock Island Rapids of the Mississippi River; and whereas the said Antoine Le Claire and wife, parties of the first part, have this day sold unto the said party of the second part all their right, title, and interest in and to all real estate now owned by said parties of the first part, situated in said reserve, and within the corporate limits of said city of Le Claire: now, therefore, the said parties of the first part, for the consideration of thirty-five thousand (35,000) dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described real estate lying and being situated in Scott County, State of Iowa, viz: All and every lot, piece, parcel, or tract of land owned, held, or claimed by the said parties of the first part (and not heretofore sold and bargained by them) situated within the limits of said Le Claire reserve within the corporate limits of the said city of Le Claire, in the county afore-

said, including each and every interest, right, title, or claim
39 that the said parties of the first part have in or to any real estate within the foregoing described limits, it being understood between the parties to this indenture that said Antoine Le Claire has heretofore given bonds to various parties for lots in said city of Le Claire, within the limits of real estate hereinbefore described as intended to be conveyed, which said bonds the said party of the second part assumes, and when the holders of said bonds shall pay up the balance of purchase-money yet back and unpaid thereon, the said balance of unpaid purchase-money shall belong to the said second party, and the said second party, viz., said A. H. Davenport, shall execute unto said bondholders deeds according to the terms of the bonds so held by them. In case the said party of the second part shall fail to ratify and contract so as aforesaid made by the said party of the first part, as a provision against such default, the said Antoine Le Claire expressly reserves herein to himself all the right and title necessary to fulfil such contract of sale of lots within the limits hereinbefore described, heretofore made by him as aforesaid, and such is the express understanding between the parties hereto.

"To have and to hold the lands herein and hereby conveyed, with all the appurtenances thereto belonging, unto him, the said party of the second part, and to his heirs and assigns, forever, the said Antoine Le Claire hereby covenanting for himself, his heirs, executors, and administrators, that the said premises are free from all incumbrances, that he has full right, power, and authority to convey the same, and he will warrant and defend the title thereto unto the said party of the second part, his heirs and assigns, against the claims of all persons whomsoever lawfully claiming the same.

"And the said Margaret Le Claire, wife of the said Antoine Le Claire, hereby releases and relinquishes all her right of dower in and to the premises herein and hereby conveyed.

"In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day of the date first herein written.

(Signed) "ANTOINE LE CLAIRE. [SEAL.]
"MARG'TE LE CLAIRE. [SEAL.]

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on the 8th day of May, A. D. 1857, before the undersigned, a notary public in and for said county, personally appeared Antoine Le Claire and Marguerite Le Claire, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed; and the said Marguerite Le Claire acknowledged that she executed the same without fear or compulsion, and for the express purpose of relinquishing her right of dower of the premises therein conveyed.

40 "Witness my hand and notarial seal the day and year above written.

[SEAL.] (Signed) "J. A. LE CLAIRE,
"*Notary Public, Scott Co., Iowa.*

"Filed for record May 24th, 1857, at 10½ o'clock a. m.
"J. M'COSH, *Rec.*

"Book D of town lots, page 291.

"EXHIBIT C.

"$7,000. On the first day of January, A. D. 1858, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, value received. Witness my hand this 7th day of May, A. D. 1857.
(Signed) "A. H DAVENPORT.

"$7,000. On the first day of January, A. D. 1859, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the 1st day of January, A. D. 1858, at 6 per cent., value received. Witness my hand this 7th day of May, A. D. 1857.
(Signed) "A. H. DAVENPORT.

"$7,000. On the first day of January, A. D. 1860, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the 1st day of January, A. D. 1858, at 6 per cent. for one year, after that 10 per cent. interest to be paid annually value received. Witness my hand this 7th day of May, A. D. 1857.
(Signed) "A. H. DAVENPORT.

"$7,000. On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the 1st day of January, A. D. 1858, at 6 per cent. for one year, after that 10 per cent. interest to be paid annually, value received. Witness my hand this 7th day of May, A. D. 1857.
(Signed) "A. H. DAVENPORT.

"$7,000. On the first day of January, A. D. 1862, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year, after that ten per cent. interest to be paid annually, value received. Witness my hand this 7th day of May, A. D. 1857.
(Signed) "A. H. DAVENPORT.

"EXHIBIT D.

"This indenture, made this 7th day of May, A. D. 1857, between Adrian H. Davenport, of the city of Le Claire, of the first part, and
41 Antoine Le Claire, of the city of Davenport, of the second part, witnesseth that the said party of the first part, for the consideration of one dollar, the receipt whereof is hereby acknowledged, as well as for the better securing of five promissory notes hereinafter described, doth, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described tract of real estate, lying and being situated in the county of Scott, and State of Iowa, to wit: All that part of a piece of land lying within the present limits of the city of Le Claire, known as "Le Claire's reserve," that has not been by the said Le Claire conveyed heretofore, being the property conveyed by the party of the second part to the party of the first part, by his deed of bargain and sale bearing even date, and executed simultaneously with these presents, to have and to hold said premises above described unto the said party of the second part, his heirs and assigns, forever.

"Provided always, and these presents are upon this express condition,

whereas said party of the first part has this day executed unto the party of the second part his certain five promissory notes, each for the payment of seven thousand dollars, the last four with interest from the first day of January, A. D. 1858, said notes being payable on the first days of January, A. D. 1858, 1859, 1860, 1861, and 1862, respectively, according to the tenor and effect of said notes, which said notes are given for purchase-money:

"Now, if the said Adrian H. Davenport, his executors or administrators, shall pay or cause to be paid to the said Antoine Le Claire the said notes when due, with the interest thereon, according to the tenor and effect thereof, then these presents shall be void; otherwise to be and remain in full force and virtue.

"In witness whereof the party of the first part has hereunto set his hand and seal the day and year first before written.

(Signed) "A. H. DAVENPORT. [SEAL.]

"The words "Le Claire" and "executed simultaneously," on the first page, interlined before signing.

(Signed) "JNO. W. THOMPSON.

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on the seventh day of May, A. D. 1857, before the undersigned, notary public in and for said county, personally came Adrian H. Davenport, to me personally known to be the identical person whose name is annexed to the foregoing indenture, and acknowledged the same to be his voluntary act and deed for the purposes therein set forth.

"Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] (Signed) "JNO. W. THOMPSON,

"*Notary Public.*

42 "The following assignment is endorsed on foregoing mortgage:

"For and in consideration of the sum of one dollar, to me in hand paid by James May, I, Antoine Le Claire, for such consideration, as well in consideration of an amicable and full settlement between said May and myself of all matters of difference heretofore existing between us, do, by these presents, sell, transfer, and assign unto said James May, his heirs and assigns, all my right, title, and interest in and to this mortgage and the notes secured thereby. The assignment of the mortgage and the said notes are without recourse on me.

"Witness my hand and seal this 10th day of March, A. D. 1859.

(Signed) "A. LE CLAIRE. [SEAL.]

"Witness: JNO. P. COOK.

"EXHIBIT E.

"Received of Adrian H. Davenport the following promissory notes, to wit:

Drawer.	Amt.	Date.	Due.	Endorsed.
J. W. Buckman	361 12	M'ch 18, '56	M'ch 18, '57	$23 50, Dec. 20, '58
Do	361 12	M'ch 18, '56	M'ch 18, '58	
Do	361 12	M'ch 18, '56	M'ch 18, '59	
Jas. Coe, Jas. A. Lewis, and A. J. Johnson	342 50	Dec. 9, '57	Dec. 9, '59	
J. G. Huntington	247 00	June 3, '55	June 3, '59	
Jas. Coe, Jas. A. Lewis, and A. J. Johnson	300 00	Dec. 9, '57	Dec. 9, '60	
Do do do	500 00	do	June 15, '58	$20, June 21, '58
Do do do	400 00	do	Dec. 9, '58	
Dennis Barnes, mayor	250 00	June 9, '55	June 9, '57	
Dennis Barnes, mayor	250 00	June 29, '55	June 29, '58	
Conrad Arnold	100 00	Oct. 25, '58	Oct. 25, '59	
P. M. McIntire	343 33	Ap'l 20, '57	Dec. 20, '58	
Do	343 33	do	July 1, '58	Oct. 6, '57, $35
Do	343 33	do	Dec. 20, '58	June 3, '58, $40
John H. Suter	350 00	Ap'l 15, '57	Oct. 1, '58	July 1, '58, $40
Do	175 00	do	do	July 2, '58, $1 60
Andrew Black	100 00	Sept. 20, '57	Sept. 20, '58	
Do	100 00	do	Sept. 20, '59	
Anderhalter	225 00	Ap'l 20, '57	July 20, '58	
Do	225 00	do	Dec. do	
Do	225 00	do	Jan'y 1, '58	
Wm. Burton	301 42	Oct. 10, '57	Dec. 25, '57	$25
Do	257 33	Oct. 10, '57	July 20, '58	
Do	257 33	do	Do 20, '59	
J. R. Morgan	60 50	do	Dec. 10, '57	
Thos. F. Phares	225 00	Ap'l 1, '57	Ap'l 1, '58	
Thos. F. Phares	225 00	Ap'l 1, '57	Ap'l 1, '59	
Thos. Crawford	186 00	Oct. 20, '58	Aug. 1, '59	
John Hawthorne	100 00	June 25, '57	June 25, '58	
Do	200 00	do	Jan'y 1, '58	
Do	100 00	do	Dec. 25, '58	Oct. 2, '58, $10
Rudolph Moran	333 33	Nov. 25, '57	Nov. 25, '58	Dec. 22, '58, $9
Do	233 33⅓	do	Do. '59	
Do	233 33⅓	do	Do. '60	
John C. Ayres	133 33	July 1, '57	July 1, '58	
Do	133 33	do	Dec. 1, '58	
Wm. Dippe	300 00	Aug. 25, 57	Aug. 25, '58	
Do	300 00	do	Do. '59	
Do	300 00	do	Do. '60	

"Whereas said A. H. Davenport did, on the 7th day of May, A. D. 1857, execute and deliver unto Antoine Le Claire five promissory notes of seven thousand dollars each, payable respectively on the 1st day
43 of January, A. D. 1858, 1859, 1860, 1861, and 1862, which notes have been assigned and transferred to me by the said Antoine Le Claire: Now, the said A. H. Davenport has delivered the foregoing list of notes to me as a further security for the payment of his said notes and interest, in consideration of which I agree to extend the payment of the notes which I do so hold against said A. H. Davenport, as follows:

"The two first notes now due are extended until January, 1861, and the other three notes, not yet due, are extended for two years beyond the respective time of their maturity; provided, and it is a part of this agreement, that said A. H. Davenport shall pay at least $800 of the interest upon said notes on or before the 1st day of October next, and the further sum of $800 by the 1st of January next, and the accrued interest unpaid on all of the said notes on the 1st January, 1861, shall be fully paid on that day.

"EXHIBIT F.

"This indenture, made the first day of November, A. D. 1856, between James May, of Davenport, in the State of Iowa, of the first part, and

George F. Kettell, of Poughkepsie, New York, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of thousand one hundred and twenty-five dollars, the receipt of which is hereby acknowledged, does, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the certain tract of real estate situated in the county of Scott, State of Iowa, to wit: A part of the southeast quarter of section number fourteen (14) in township number seventy-eight (78) north, of range number three (3) east, of the fifth principal meridian, and described as follows: Situated on the east side of the Iowa City road, bounded north by lands of Mr. Gilruth; east by lands lately owned by Mr. Kincaid; south by Duck Creek; west by the Iowa City road, being the premises upon which the party of the first part now lives, and containing seventy acres of land; to have and to hold the premises above described, with all the appurtenances thereto belonging, unto the said second party, and to his heirs and assigns, forever; provided always, and these presents are upon this express condition, that if the said James May, his heirs, executors, or administrators, or assigns, shall pay or cause to be paid to the said George F. Kettell, his executors, administrators, or assigns, the sum of three thousand one hundred and twenty-five dollars on the first day of November, 1857, with interest thereon at ten per cent. per annum after due, according to the tenor and effect of the promissory note of the said James May, bearing even date with these presents, then these presents to be void; otherwise to be and remain in full force.

44 "In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first herein written.

(Signed) "JAMES MAY. [SEAL.]

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on this third day of November, A. D. 1856, before the undersigned justice of the peace, in and for said county, came James May, to me personally known to be the identical person whose name is subscribed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

"Witness my hand and seal the day and year last above written.

[SEAL.] (Signed) "R. D. CONGDON,
"*Justice of the Peace.*

"Filed for record Nov. 3d, 1856, at 2½ p. m., in book J of mortgages, page 301.

"J. McCOSH, *Recorder.*

"EXHIBIT G.

"STATE OF IOWA, *Scott County, ss:*

"George R. West, being duly sworn, says that he is one of the proprietors of the Iowa State Democrat, a newspaper published in said county, and that a notice, a printed copy of which is hereunto annexed, has been published in said paper (3) three weeks, commencing on the 28th of June last.

(Signed) "GEO. R. WEST.

"Subscribed and sworn to before me this 20th day of July, 1859.

(Signed) "GEO. M. VAN HOSEN,
"*Notary Public, Scott Co., Iowa.*

"*Trustee's sale.*

"Whereas on the 1st day of May, A. D. 1857, James May, of Davenport, Scott County, Iowa, executed unto Charles Powers, as trustee, a certain deed of trust, conveying to said trustee the land in Scott County, Iowa, described as follows, to wit: The southeast quarter of section number fourteen (14) in township number seventy-eight (78) north, of range three (3) east, of 5th principal meridian, excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek, which said conveyance was made by the said James May for the purpose of securing the payment of one certain promissory note and the interest thereon, signed by said James May, and dated the 1st day of May, A. D. 1857, and payable as follows, for the sum of six thousand five hundred and fifty dollars, payable on the 1st day of May, 1858, with interest at ten per cent. per annum; and now, said promissory note having become due and payable, and the said James May having
45 failed to pay the same, I, Charles Powers, trustee as aforesaid, do hereby give this public notice, that by virtue of the power which is in me vested by said deed of trust, I will, on Wednesday, the 20th day of July, A. D. 1859, at the hour of 2 o'clock in the afternoon of said day, at the court-house door in the city of Davenport, expose and offer for sale at public auction, to the highest bidder for cash, the parcel of land above described, or so much thereof as shall be sufficient to satisfy and pay the amount of said note, with interest thereon to the day of sale, together with all the costs and expenses attending said sale, costs of this notice, and trustee's fees.

"Dated the 25th day of June, A. D. 1859.

"June 28.

(Signed) "CHARLES POWERS, *Trustee.*

"EXHIBIT H.

"This indenture, made and executed this 20th day of July, A. D. 1859, by and between Charles Powers, of Davenport, of the county of Scott and State of Iowa, of the first part, and Louis C. Dessaint, of the same place of the second part, witnesseth that whereas James May, of Davenport aforesaid, by a certain deed of trust bearing date the first day of May, A. D. 1857, for the consideration of six thousand five hundred and fifty dollars, did bargain, sell, and convey unto the said Charles Powers, as trustee, and to his heirs and assigns, forever, all of the following described parcel of land situated in the county of Scott and State of Iowa, to wit: The southeast quarter of section number (14) fourteen in township seventy-eight (78) north, of range three east, of fifth principal meridian, excepting fifteen 1-100 in west half of said section, and on the south side of Duck Creek, which deed was made subject to a proviso therein contained, that the same was made for the purpose of securing the payment of one certain promissory note executed by the said James May, for the sum of six thousand five hundred and fifty dollars, bearing same date with said deed of trust, and payable on the first day of May, 1858, with interest at ten per cent. per annum, with a special power in said deed of trust, authorizing said Charles Powers, trustee as aforesaid, in case said James May should neglect to pay the promissory note aforesaid, or any part thereof, or the interest when due, to advertise said property, in any newspaper printed in said county of Scott, at least twenty days, and sell the same at public auction, at the court-house door, in the city of Davenport, to the highest bidder for cash, with power to execute to the purchaser a deed, in fee

simple, for the premises aforesaid, which deed will be absolute, and prevent said James May, party of the first, and his heirs, from setting up any claim thereto, either in law or equity; and whereas said deed of trust was duly recorded upon the records of said Scott County
46 on the fourth day of May, A. D. 1857, as appears endorsed thereon, and in book L of mortgages, page 106, to which deed, and the record and the power therein, reference is hereby made, and in which all the matters recited herein more fully and at large appear; and whereas default having been made in the payment of the money so secured by said deed of trust, the premises hereinbefore particularly described and set out were, on Wednesday, the 20th day of July, A. D. 1859, at the hour of two o'clock in the afternoon, and at the court-house door, in said city of Davenport, at public auction, for cash, sold to Louis C. Dessaint, the said party of the second part, for the sum of five thousand dollars, he being the highest bidder therefor, public notice having been previously given of said sale by an advertisement inserted in a newspaper printed and published in said county of Scott, and entitled "Iowa State Democrat," no one offering to bid on any part of said tract less than the whole, I offered the whole tract which was sold as above: Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the sum aforesaid, and to him in hand paid, the receipt whereof is hereby acknowledged by the said party of the first part, has granted, bargained, and sold, and, by these presents, does grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, forever, all and singular the parcel of land which is hereinbefore set out and described, with all the rights and privileges thereunto belonging and appertaining, as the same are described and conveyed in said deed of trust, and all the right, title, and interest of James May, whether in law or equity, as well as of the said first party, in and to the premises before mentioned and described, and every part thereof, as fully and to all intents and purposes as the said party of the first part has power and authority to give, grant, and sell the same by virtue of said deed of trust; to have and to hold the said premises, and every part thereof, with all the appurtenances, to him, the said second party, and to his heirs and assigns, forever.

"In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) "CHARLES POWERS, [SEAL,] *Trustee.*

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on this 20th day of July, A. D. 1859, before the undersigned, a notary public in and for said county, personally appeared Charles Powers, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

"Witness my hand and notarial seal the day and year last above written.

(Signed) "R. D. CONGDON, *Notary Public.*

47 "EXHIBIT I.

"*James May—Notice to Louis C. Dessaint.*

"To Louis C. Dessaint and all who it may concern, and especially to any party desiring to take a conveyance from said L. C. Dessaint of the premises hereinafter described:

"You and each of you are hereby notified not to take any conveyance,

or for any consideration for a purchase, from Louis C. Dessaint, to the following property in Scott County, Iowa, viz: The southeast quarter of section fourteen, township seventy-eight, range three east, of 5th P. M., excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek, being the premises conveyed to said Dessaint on the 20th day of July, 1859, by Charles Powers, under a pretended sale under a deed of trust—said deed to Dessaint was recorded in the office of the recorder of said county July 21st, 1859—inasmuch as the said deed was procured by fraud, and no title was conveyed thereby, and the sale was illegal and the deed not made in pursuance of and under the sale. Any further particulars will be given on application to me.

(Signed) "JAMES MAY.

"STATE OF IOWA, *Scott Co.:*

"On this 26th day of July, 1859, before me, a notary public within and for said county, personally appeared James May, to me personally known to be the identical person whose name is subscribed to the foregoing instrument, and acknowledged the same to be his voluntary act and deed.

"Witness my hand and seal the day and year last above written.

[SEAL.] (Signed) "ALFRED EDWARDS,
"*Notary Public, Scott Co., Iowa.*

"Filed for record July 26th, 1859, at 2 o'clock p. m., in book V of deeds, page 562.

"J. M'COSH, *Recorder.*

"EXHIBIT J.

"This indenture, made this 27th day of July, A. D. 1859, between Louis C. Dessaint and Marie C. Dessaint, his wife, of the county of Scott, and State of Iowa, parties of the first part, and Ebenezer Cook, of the city of Davenport, county of Scott, and State of Iowa aforesaid, party of the second part, witnesseth that said parties of the first part, for and in consideration of the sum of seven thousand six hundred and ninety ($7,690) dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, sell, and quitclaim unto the said party of the second part, his heirs and assigns, forever, all their interest in the following described real estate situated in the county of Scott,
48 and State of Iowa, as aforesaid, to wit: The southeast quarter of section number fourteen, (14,) in township seventy-eight (78) north, of range three (3) east, of the fifth principal meridian, excepting fifteen 1-100 acres in the west half of said section, and on the south side of Duck Creek. In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

(Signed) "L. C. DESSAINT. [L. S.]
"MARIE C. DESSAINT. [L. S.]

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on this twenty-seventh day of July, A. D. 1859, before me, a notary public within and for said county, personally appeared Louis C. Dessaint and Marie C. Dessaint, his wife, to me personally known to be the identical persons whose name are subscribed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed; and the said Marie C. Dessaint, wife

of the said Louis C. Dessaint, declared that she relinquished all her right of dower in the lands and tenements therein mentioned.

"Witness my hand and notarial seal the day and year last above written.

(Signed) "WM. T. CLARK,
"*Notary Public, Scott Co., Iowa.*

"Filed for record July 26th, 1859, at 2 o'clock p. m., in book V of deeds, page 562.

"J. M'COSH, *Recorder.*

"EXHIBIT K.

"This indenture, made this sixteenth day of December, A. D. 1859, between Ebenezer Cook and Clarissa C. Cook, his wife, of the city of Davenport, and State of Iowa, parties of the first part, and George L. Davenport, of the same place, party of the second part, witnesseth that the said parties of the first part, for the consideration of seven thousand six hundred and ninety ($7,690) dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, the following described tract of real estate, lying and being situated in the county of Scott, State of Iowa, to wit: The southeast quarter of section number fourteen (14) in township seventy-eight (78) north, of range three (3) east, of the fifth principal meridian, excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek; to have and to hold the premises above described, with all the appurtenances thereto belonging, unto the said second party, and to his heirs and assigns, forever; the said Ebenezer Cook hereby covenanting for himself, his heirs, executors, and administrators, that the above-de-
49 scribed premises are free from any incumbrance; that he has full right, power, and authority to sell the same, and he will warrant and defend the title unto the said party of the second part, his heirs and assigns, against the claims of all persons whomsoever, lawfully claiming the same; and the said Clarissa C. Cook, wife of the said Ebenezer Cook, hereby releases and relinquishes all her right of dower in and to the foregoing described premises. In witness whereof the said parties of the first part have hereunto set their hands and seals the date first above written

(Signed) "EBENEZER COOK. [SEAL.]
"CLARISSA C. COOK. [SEAL.]

"STATE OF IOWA, *Scott County, ss:*

"Be it remembered that on the 16th day of December, A. D. 1859, before the undersigned, a notary public in and for said county, personally appeared Ebenezer Cook and Clarissa C. Cook, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed; and the said Clarissa C. Cook acknowledged that she executed the same without fear or compulsion, and for the express purpose of relinquishing her right of dower in the premises therein conveyed.

"Witness my hand and notarial seal the day and year last above written.

[SEAL.] "JOHN C. DAVIE,
"*Notary Public.*

"Filed for record Dec. 16, 1859, at 2 o'clock p. m., in book W of deeds, page 502.

"EXHIBIT L.

"To the Honorable John F. Dillon, judge of the district court in and for the county of Scott, and State of Iowa, in chancery sitting:

"Your orator, George L. Davenport, of the city of Davenport, Scott County, and State of Iowa, humbly complaining, represents to your honor that, on or about the first day of May, A. D. 1857, one James May, then of the said county and State, was the owner in fee simple and in possession of the following described real estate, lying and being situated in the county of Scott, and State of Iowa, to wit, the southeast quarter of section number fourteen (14) in township seventy-eight (78) north, of range three east, of fifth principal meridian, excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek; and being so the owner and in possession of the said described real estate, he, the said James May, did, on the first day of May, A. D. 1857, in consideration of the sum of six thousand
50 four hundred and fifty dollars, the receipt whereof he acknowledged to have received, execute and deliver to one Charles Powers a certain deed of trust, (a copy whereof is hereto annexed, marked Exhibit A, and made part of this bill,) whereby he, the said James May, conveyed the said premises above described to the said Charles Powers, to have and to hold the same in trust, to secure the payment to Nicholas H. and Anthony F. Steppell, of a certain promissory note for the sum of six thousand five hundred and fifty dollars, on the first day of May, 1858, executed by the said James May on the same day that he executed the said deed of trust. The said deed of trust grants a special power to the said Charles Powers, authorizing, directing, and empowering the said Charles Powers, as trustee, in case the said James May should fail or refuse to pay the said note when the same should become due, to advertise the said property in some newspaper printed in the county of Scott at least twenty days, and sell the same at public auction at the court-house door, in the city of Davenport, to the highest bidder for cash, in parcels and tracts of such size as the said Powers should deem most advantageous for the said May, or so much thereof as should be necessary to satisfy the amount then due, and the said Powers was fully authorized and empowered to execute a deed in fee-simple for so much of the premises as he should sell to the purchaser thereof, and the said May covenanted that such deed should be absolute, and prevent him, the said May, his heirs and assigns, from ever setting up any claim thereto, either in law or equity. The said deed of trust was acknowledged according to law on the 2d day of May, A. D. 1857, before R. D. Congdon, justice of the peace, and recorded May 4th, 1857, at 9 o'clock a. m. of said day, in book S of mortgages, page 106, of Scott Co. records.

"Your orator further represents that afterwards, to wit, on the 1st day of May, A. D. 1858, when the said note became due and payable, the said May did not pay the same; and that afterwards, to wit, on the 28th day of June, A. D. 1859, the said note still remaining due and unpaid, the said Powers, trustee as aforesaid, under the power in said deed contained, caused a notice of the sale of said premises to be advertised for three weeks, commencing on the said 28th day of June, A. D. 1859, in the Iowa State Democrat, a newspaper published in the said county of Scott; and did afterwards, to wit, on Wednesday, the 20th day of July, A. D. 1859, at the hour of two o'clock in the afternoon, in pursuance of the terms of said notice and of the power in said deed contained, offer the said premises for sale at public auction, at the court-house door in the

city of Davenport, and no one offering to bid on any part of said tract less than the whole, and one Louis C. Dessaint having bid five thousand dollars on the whole of said premises, and he being the high-
51 est and best bidder therefor, the said premises were struck off and sold to the said Louis C. Dessaint; and afterwards, to wit, on the said 20th day of July, A. D. 1859, the said Charles Powers, trustee as aforesaid, executed and delivered to the said Louis C. Dessaint, under the power contained in the said deed, a deed in fee-simple of all the right, title, and interest of the said May in the said premises, which said deed was duly acknowledged, as required by the law, on the said 20th day of July, 1859, and, with a copy of the notice of the said sale, and the proof of publication, was recorded in book V of deeds, page 546, of Scott County records, on the 21st day of July, A. D. 1859, at one o'clock five minutes p. m. (A copy of said deed is hereunto annexed, marked Exhibit B, and made part of this bill.) Your orator further represents that the said Louis C. Dessaint, so owner in fee-simple of the premises, did afterwards, to wit, on the 27th day of July, A. D. 1859, in consideration of the sum of seven thousand six hundred and ninety dollars, to him paid by one Ebenezer Cook, [did] grant, sell, and quitclaim to the said Ebenezer Cook the said premises hereinbefore described, which said deed, executed by the said Louis C. Dessaint and Marie C. Dessaint, his wife, was legally acknowledged on the same day, and recorded on the 28th day of July, A. D. 1859, at 2 o'clock p. m., in book V of deeds, page 576, of Scott County records. (A copy of said deed is hereunto annexed, marked Exhibit C, and made a part of this bill.) Your orator further represents that the said Ebenezer Cook, being the owner in fee-simple of the said premises, did afterward, to wit, on the 16th day of December, A. D. 1859, together with his wife, Clarissa C. Cook, in consideration of seven thousand six hundred and ninety dollars to said Cook paid, grant, bargain, sell, and convey unto your orator, his heirs and assigns, the premises hereinabove described, and executed and delivered a deed therefor, of said date, legally acknowledged on the same day; which said deed was recorded on the 16th day of December, 1859, at 2 o'clock p. m., in book W of deeds, at page 502. (A copy of which deed, marked Exhibit D, is hereto attached and made part fo this bill.)

"Your orator further represents that he is the owner in fee-simple of said premises, and is and has been since the said conveyance to him, in possession thereof. Your orator further represents that the said James May, subsequent to the time of the said sale by the said Powers, as trustee, to the said Louis C. Dessaint, to wit, on the 26th day of July, A. D. 1859, fraudulently contriving to injure the said Dessaint and others who might become entitled to the said premises, prepared, signed, and caused to be recorded in the records of Scott Co., Iowa, a notice to the said Louis C. Dessaint and all whom it might concern, and specially to any party desiring to take a conveyance from said Louis C. Dessaint of the above-described land, warning persons not to purchase said
52 was void, and that no title was thereby conveyed, and other matters therein contained, as will be seen from a copy of said notice hereunto annexed and marked Exhibit E, and made part of this bill.

"Your orator further represents that the said May still claims to have some right and title to the said premises in contravention to the rights of your orator under the sale and deed hereinbefore set forth.

"Your orator further says that by reason of the said notice by the said

May aforesaid, and of the claiming of title to the said premises, a cloud is cast upon the validity of your orator's title thereto, and the value of the said property to your orator much diminished, for which damage and injury done to your orator's rights in the premises, your orator has no full, adequate, and perfect remedy at law, but is relievable only in equity.

"Your orator, therefore, makes the said James May defendant herein, and prays that he, the said May, be required to answer hereto, and set forth fully and particularly what right or title he claims to have, if any, in said premises, that upon final hearing hereof your orator's title to the said premises may be decreed to be valid and perfect; that the said May shall be decreed to convey to your orator his said pretended claim and title, and be forever enjoined from setting up, making claim to, or disturbing your orator's right therein, under said sale, and for such other and further relief as your orator may be entitled to in the premises.

(Signed) "PUTNAM & LEAKE,
"*Solicitors.*

"STATE OF IOWA, *Scott County, ss:*

"George L. Davenport, being first duly sworn, says that he is the petitioner in the foregoing bill in equity, and that he knows the contents thereof; that the matters and things therein set forth as of his own knowledge he knows to be true, and that those matters and things therein set forth as from the knowledge of others, he believes to be true.

(Signed) "GEO. L. DAVENPORT.

"Subscribed to and sworn before me this 12th day of January, 1860.

[N. S.] (Signed) "JOHN MONGER,
"*Notary Public, Scott Co., Iowa.*

"EXHIBIT N.

"THE STATE OF IOWA, *Scott County, ss:*

"To James May, his agent and attorneys:

"Please take notice that I am now ready to perform my part of a certain contract entered into with you on the 8th of March, 1859, which contract is in the words and figures following, to wt:

53 "'I will agree to compromise all matters in controversy or dispute between Antoine Le Claire, esq., and myself, if he will now agree to the following proposition:

"'On my part, I will agree to cancel my claim to what may be due or claimable by me from Mr. A. Le Claire of every kind, and will give him a clear deed for Rose Bank, with all the improvements on the 143 acres of land, I binding myself to pay, within twelve months, the incumbrance that is now on the Rose Bank farm.

"'Said Antoine Le Claire, on his part, to give up and release all claims he has, of every kind, on me, and to give to me a good and sufficient deed and transfer of all his right, title, interest, and claim to all that part of his reserve at the head of the rapids, which he sold on contracted to sell to Captain A. H. Davenport, of Le Claire.

"'He, A. Le Claire, putting me in law and in fact, in his place and stead, as if he had made a clear deed to me when he made the contract to sell to said A. H. Davenport; said Le Claire transferring to me all kind of payments and securities that he had received from said A. H. Davenport.

"'Said A. Le Claire also to give me a good deed for the land he owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland, near said island.

"'It will be the understanding, if we make an amicable compromise, as I propose, that I am to give Mr. Le Claire no unnecessary trouble in any compromise or settlements that may be necessary to make with said A. H. Davenport, or others who have or may be purchasers of said land; but it is to be clearly understood that said A. Le Claire is to give me all the information, facility, and power he can to enable me to carry out, in good faith, all the conditions he has made up to this date with the said A. H. Davenport, in the premises.

"'I do not consider the acceptance of this compromise, on the part of Mr. A. Le Claire, as his awarding to me all that I have a just right to claim; but I feel persuaded that Mr. Le Claire is under the erroneous impression that my claims are much less in equity and good conscience than they really are.

"'I will now prefer that we submit the matter as I proposed on the 26th ultimo.

"'I have sanguine hopes that a fair, amicable adjustment would render me a more profitable award than I will get now by this proposition, and save me from a considerable amount of labor, care, and anxiety, that must devolve on me if my friend Le Claire accepts this.

(Signed) "'JAMES MAY.

"'DAVENPORT, *Feb'y* 4, 1859.

"'I hereby agree to the foregoing proposition.

(Signed) "'A. LE CLAIRE.

"'DAVENPORT, *March 8th*, 1859.

54 "'I hereby also agree to the above proposition.

(Signed) "'JAMES MAY.

"'DAVENPORT, *March* 8, 1859.'

"I now demand of you a good and sufficient deed for Rose Bank farm, mentioned in said contract, and that all the incumbrances, judgments, and liens of every character be removed from said Rose Bank farm, so that I get a clear, perfect, and unincumbered title therefor. And I now offer, on my part, to comply with all the covenants and undertakings in said contract mentioned, by me to be performed; and for this purpose I now offer you a good sufficient deed for all the real estate which I covenanted to convey to you; also the said notes against said A. H. Davenport, the mortgage securing the same, the collaterals thereto, and all other papers necessary to carry out my part of the said agreement, all of which the bearer of this will deliver to you, provided that you do comply with your part of the contract.

(Signed) "A. LE CLAIRE.

"DAVENPORT, IOWA, *March 9th*, 1860."

55 Your orator further shows that all the said defendants appeared to the said bill of complaint, & on the 29th day of June, 1861, and filed their demurrer thereto.

Your orator further shows that on the fifth day of August, A. D. 1861, your orator, under leave of the court first had and obtained, filed his

bill amendatory of his said original bill in this honorable court against the said defendants in words & figures as follows, to wit:

56 "*Amended bill in chancery.*

"JAMES MAY
vs.
ANTOINE LE CLAIRE, LEWIS C. DESSAINT, Ebenezer Cook, Geo. B. Sargent, John P. Cook, and Geo. L. Davenport.

"To the honorable judge of the district court of the United Scates for the district of Iowa, southern division:

"Your orator, James May, by and under leave of the court first had and obtained, files this his amended bill in chancery against said defendants as follows:

"Your orator shews that on the 24th day of April ,1860, said Antoine Le Claire filed his petition in the clerk's office of the district court of Scott County, Iowa, against Adrian H. Davenport, the mortgagor of the mortgage and realty described in your orator's original bill as "Exhibit D" of that bill, and against sundry other persons in his said petition named, who had or claimed to have interest in the realty described in said mortgage, and asking for a judgment for the amount due him on the notes which said mortgage was executed to secure, and for the foreclosure of said Adrian H. Davenport's equity of redemption in said mortgaged premises, and a sale of the same to pay such judgments as should be rendered against said Adrian H. Davenport, and that the other defendants to said petition should be bound by such judgment and degree, and for further and other relief, &c., &c.

"Your orator further shews that notice was issued to said Adrian H. Davenport and the other defendants in said suit, informing them of the filing of said petition by said Antoine Le Claire, and requesting them to appear and answer the same; and that on the 6th day of June, 1860, said Adrian H. Davenport appeared and filed his answer to said petition, and therein expressly waiving all right for further time to answer the same, and confessing the truth of the allegations contained in said petition.

"That afterwards, to wit, at the June term, 1860, of said disttrict court of Scott County, Iowa, said Adrian H. Davenport, by his counsel in open court, confessed the claim of said Antoine Le Claire, and agreed that a decree 'pro confesso' therein should be rendered in favor of said Antoine Le Claire, according to the prayer of his said petition; that afterwards, to wit, at the August term, 1860, of said district court of Scott County, Iowa, said court rendered a judgment against said Adrian H. Davenport in favor of said Antoine Le Claire, for the sum of forty-one thousand seven hundred and eight 32-100 dollars ($41,708 32-100) and costs, and to bear six per cent. interest, and a decree that said Adrian H. Davenport's equity of redemption in said mortgaged premises should be barred and foreclosed, and that a special execution should issue against the real estate in said mortgage described, to wit: The tract of real estate lying and being situated in the county of Scott, and State of Iowa, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire heretofore sold, being the
57 property conveyed by the said Le Claire to the said Davenport by his deed of bargain and sale, bearing even date with, and executed

similtaneously with, said mortgage, and that if said realty should not sell for enough to pay said judgment, then general execution should issue for the balance due on said judgment, all of which in relation to said notice, petition, answer of said Adrian H. Davenport, and the judgment and decree rendered in said suit will more fully and at large appear by reference to the records of the same in said district court of Scott County remaining, and copies of which are hereto filed as a part of this amended bill as Exhibits O, P, Q, R.

"Your orator further shews that afterwards, to wit, on the 6th day of April, 1861, an execution was issued on the judgment and decree aforesaid, and placed in the hands of the sheriff of Scott County aforesaid for servce according to law.

"That the said sheriff, having advertised the realty described in said execution at the times and place set for said sale, sold the same to one Joseph A. Le Claire, a nephew of said Antoine Le Claire, for the sum of twenty thousand dollars, though said Joseph A. Le Claire paid no part of the purchase-money thereof; that the said sheriff made his return on said execution to the purport that he had sold the realty described therein to Antoine Le Claire for twenty thousand dollars; afterwards, to wit, on or about the 30th day of May, 1861, the said sheriff executed, acknowledged, and delivered to said Antoine Le Claire a deed in fee under said sale, conveying said realty as in said execution is described to said Antoine Le Claire, his heirs and assigns, and who caused the same to be recorded in the recorder's office of Scott County, Iowa, and where it is to be found record in record-book 'R,' of records of town lots, page 319, all of which relative to the issuing of said execution, the advertisement thereunder, and the sheriff's return on said execution, will more fully and at large appear by reference to the said execution and the return thereon, in the district court of Scott County being and remaining, and copies of which are hereto annexed at parts of this amended bill, marked Exhibit S, T.

"Your orator also files herewith a copy of said deed from said sheriff to said Antoine Le Claire as a part of this amended bill, marked Exhibit U.

"Your orator further shows that said Antoine Le Claire filed as exhibits with his said petition copies of said mortgage and notes executed by the said Adrian H. Davenport as before described, but did not file the said mortgage and notes themselves until after the rendition of said judgment and decree.

"Your orator further shews that each of said notes was assigned to your orator by said Antoine Le Claire at the time and place that he assigned the mortgage of the said Adrian H. Davenport to your orator, as is in your orator's original bill described and set forth, but that said Antoine Le Claire in derogation of the rights of your orator in the premises, and for the purpose, as your orator believes and charges, of defrauding him, drew, or caused to be drawn, ink lines over the said endorsements on the said notes for the purpose of defacing and destroying said endorsements; and he cut, or caused to be cut and removed, from the sheet on which said mortgage was within the assignment of said mortgage to your orator by said Antoine Le Claire, of which a description is given and set forth in the original bill of your orator.

58 "Your orator further shews that by virtue of chapter 110 of the laws of the eighth general legislative assembly of the State of Iowa, the said Adrian H. Davenport was exempted from answering the petition of said Antoine Le Claire until the expiration of nine months

from the time when service of the notice issued in said suit was served upon him; and your orator is informed and believes, and so charges the truth to be, that [that] there was an understanding and agreement between said Antoine Le Claire and said Adrian H. Davenport to the purport and effect that said Adrian H. Davenport shall waive his right to such extension of time to file his answer unto said petition, and should coincide and assent to all such measures as should be deemed necessary by said Antoine Le Claire and his council, to facilitate said Antoine Le Claire in his efforts to procure a judgment and decree in said suit, and a sale of the realty to which said judgment and decree should be made to apply; and that as a consideration for such acts and conduct to be done and performed by said Adrian H. Davenport, said Antoine Le Claire agreed and stipulated to and with said Adrian H. Davenport that no part of the judgment to be rendered in said suit should be demanded nor collected from said Adrian H. Davenport, except so far as the said realty in the said mortgage described should pay the same.

"And your orator is informed and believes, and so charges the truth to be, that under and by virtue of said agreement said Adrian H. Davenport has been, and now is, released from all liability for and on account of said notes and mortgage, and the judgment rendered thereon as aforesaid, so far as said Antoine Le Claire could or had authority and power to release him therefrom.

"Your orator further shews and represents that though he believes from the affidavit of Alfred Edwards and Geo. H. Parker, his attorneys at Davenport, Iowa, filed in the said suit of Antoine Le Claire against said Adrian H. Davenport and others, that he must have been informed of the pendency of said suit as in said affidavits is specified, yet your orators must, through misapprehension, as he believes, on his part, have understood the said information thus given to him to apply to the suit of Geo. L. Davenport, of which mention is made in your orator's said original bill, for when your orator filed his original bill in this suit, he had no recollection or knowledge of the said suit of Antoine Le Claire against Adrian H. Drvenport and others, and because he had no recollection or knowledge of such proceeding he did not complain of the same, and set it forth in his said original bill and pray relief therefrom; that soon after the filing of his said original bill, he first heard understandingly of said suit of Antoine Le Claire against said Adrian H. Davenport and others, and that a special execution had been issued on the judgment and decree rendered therein, and placed in the hands of the sheriff of Scott County, Iowa, for service; that your orator, on the 14th day of May, 1861, being four days before the day advertised for the sale under said execution by said sheriff, served on and delivered to said sheriff a written notice, informing him of the rights of your orator in relation to the realty advertised by him to be sold, and requested him to inform all bidders of the same, and which notice and information was given to said Joseph A. Le Claire, to Antoine Le Claire, (or his attorney, J. P. Cook,) before said property was sold as aforesaid. A copy of
59 said notice is hereto annexed to be taken and considered as part of this amended bill, marked Exhibit 'V.'

"Your orator further shews that said Antoine Le Claire has now the possession of and claims to be the owner absolutely of all the notes, claims, and evidences of indebtedness which he received of said Adrian H. Davenport, for and on account of the indebtedness of said Adrian H. Davenport, on the notes and mortgage aforesaid, and he now holds, occupies, controls, and claims to be the owner in fee of all the realty de-

scribed in said sheriff's deed, irrespective of his compromise agreement with your orator, of which a copy is filed as Exhibit 'A' in the original bill of your orator.

"Wherefore your orator submits to the court that inasmuch as said Antoine Le Claire has sued said Adrian H. Davenport on the said notes and mortgage, which in equity belong to your orator, and has obtained a judgment thereon in his own name, and in his own name has purchased the property to which said mortgage applied, and has released said Adrian H. Davenport from all liability on said judgment over and above what he, said Antoine Le Claire, has received from him by the purchase of the property and receipt of notes, and claims on third parties as aforesaid:

"Your orator, therefore, claims that he is entitled to have judgment against said Antoine Le Claire for the amount he obtained judgment against said Adrian H. Davenport, in the foreclosure suit hereinbefore shewn and stated with interest and costs.

"Your orator, therefore, prays that said Antoine Le Claire and the other said defendants to this suit, be required to answer on their respective corporal oaths all the several matters and things in this amended as well as in the original bill contained; and your orator, for amendatory of the prayers of his original bill, prays that said Antoine Le Claire shall be decreed to pay your orator the sum of forty-one thousand seven hundred and eight 32-100 dollars, ($41,708 32-100,) the amount for which said Antoine Le Claire obtained judgment against said Adrian H. Davenport as oforesaid, with interest and costs; or, if it should be the opinion of the court that said Antoine Le Claire should be held as trustee in trust of said realty described in said sheriff's deed, of the moneys, notes, and securities received by him of said Adrian H. Davenport as aforesaid, to and for the use and benefit of your orator, then your orator prays that said Antoine Le Claire be required to convey all of said realty to your orator, in like manner and conditions as to title, and its exemptions from encumbrances as it was when he received the same; and the same to be thus transferred, at its real value, to be ascertained under the direction of this honorable court; and that said Antoine Le Claire be required to pay over and deliver to him all moneys, notes, and other evidences of indebtedness which he, said Antoine Le Claire, obtained of said Adrian H. Davenport as aforesaid, and that an account be taken of the amount which said Adrian H. Davenport owed on said notes and mortgage, over and above the amount he paid said Antoine Le Claire as aforesaid, and the real value of the realty purchased by said Antoine Le Claire as aforesaid, and that your orator may have judgment against said Antoine Le Claire for the amount thus found to be unpaid by said Adrian H. Davenport as aforesaid, together with interest, damages, and costs; and for such other and further relief as equity and good conscience may require otherwise than is herein modified and amended.

"Your orator also prays specifically the allowance of the prayers in his original bill contained.

"August 1st, 1861.

(Signed) "LOWRIE & MILLER,
"RANKIN & MILLER,
"*Att'ys for Pl'ff.*

"STATE OF IOWA, *Lee County, ss:*

"I, James May, on my oath lawfully administered, do depose and say that the matters and things contained in the original bill in the suit of James May vs. Antoine Le Claire and others, to which the foregoing is

an amended bill, as also the matters and things contained in this amended bill, are true, to the best of my knowledge and belief.

"JAMES MAY.

"Sworn and subscribed by said James May in my presence this August 1st, 1861.

"J. M. LOVE,
"*Judge U. S. Court.*"

60 Your orator further shows that at the September term, A. D. 1861, of said court, to wit, on the 23d day of September, 1861, the said court overruled the said demurrer of said defendants, and gave them liberty to answer by next rule day of said court, as by reference to the records of said court in the clerk's office remaining, & which are made a part of this bill, doth fully and at large appear.

Your orator further shows that said Louis C. Dessaint, Ebenezer Cook, John P. Cook, & George L. Davenport have filed their respective answers in compliance with said rule of court, but that said Antoine Le Claire departed this life on or about the 25th day of September, A. D. 1861, without having put any answer to either the said original or amended bill of complaint, whereupon the said proceedigs became abated as to him.

Your orator further shows that said Antoine Le Claire, before his decease, made his will, wherein, among other things, he appointed & constituted his wife, (now widow,) Marguirete Le Claire, executrix, and George L. Davenport, executor, of said will & testament, & provided and directed by said will that his debts and funeral charges should be paid out of his estate as soon as they could be convenently after his death; and devised and bequeathed all other his estate, real & personal, legal & equitable, in possession & in trust, to said Margueritte Le Claire
61 during her natural life, with remainder in fee & ownership, absolutely to others as in & by said will is set forth, of which the following is a true copy, to wit:

62 "*Will of Ant. Le Claire.*

"I, Antoine Leclaire, of Scott County, Iowa, being in good health, and of sound and disposing mind and memory, and being desirous to settle my worldly affairs, do make, publish, and declare this my last will and testament, hereby revoking and making void all former wills by me at any time heretofore made. Firs. It is my will that all my just debts and the charges of my funeral be paid by my executor and executrix hereinafter named out of my estate as soon as conveniently may be after my decease. Second. I hereby give, devise, and bequeath all my estate & effects, real, personal, and mixed, whatsoever and wheresoever, and of what nature and kind soever, which, at the time of my decease, I, or any person or persons in trust for me, may or shall own, or are possessed of, or entitled to, and whether my title thereto be legal or equitable, and whether in possession or expectancy, unto my wife, Marguerite Leclaire, to be used and enjoyed by her for and during her natural life. Third. From, upon, and immediately the decease of my said wife, Marguerite Leclaire, I give, devise, and bequeath all the remainder or remainders, and the reversion or reversions, of the estate and effects, real, personal, & mixed, whatsoever and wheresoever, and of what nature and kind soever, and whether legal or equitable, herein-
63 before devised and bequeathed to my said wife, Marguerite Le-

claire, for and during her natural life, to the persons and in the proportions following respectively, and to their heirs and assigns, forever, to wit, the same being divided into the requisit number of equal shares: I give, devise, and bequeath one share thereof to my brother Francis Leclaire, and one share each to each of his children, as well those now living as those born before the decease of my said wife Marguerite Leclaire; one share to my brother, David Leclaire, and one share each to each of his children, as well those now living as those born before the decease of my said wife; one share to my nephew Lewis Leclaire, son of my deceased brother, Alexis Leclaire; one share to Ettiene Bienvenue, son of my wife, Marguerite Leclaire's, deceased sister Victorie Bienvenue, and one share each to each of his children, as well those now living as those born before the death of my said wife; one share to Adaline Bienvenue, daughter of my said wife's deceased sister Victorie Bienvenue, and one share each to each of her children, as well those now living as those born before the death of my said wife, Marguerite Leclaire; and one share each to each of the children of Victorie Saucier, the deceased daughter of my said wife's deceased sister Victorie Bienvenue. And further, it is my will, if subsequent to
64 this date, and before the death of my said wife, any of the persons hereinbefore in this clause of my will named and designated, should depart this life, leaving children lawfully begotten, that then the said children of each of said persons so departing this life shall take the places, (in the divission of my property hereinbefore in this clause of my will named and provided for,) and shall receive the share to which their parents would have been entitled had he or she survived until the death of my said wife. And further, it is my will, if any of said persons so named and designated as afforesaid, shall die before the death of my said wife, leaving no children lawfully begotten, surviving my said wife, then the share or shares to which he, she, or they would have been entitled, had she or they survived until the death of my said wife, Marguerite Leclaire, shall be equally divided between and among the survivors of the persons hereinbefore in this clause of my will named and designated, in the manner and in the proportion hereinbefore provided. And further, I request and direct that my friends Gilbert C. R. Mitchell, George L. Davenport, and Charles E. Putman, all of Scott County, Iowa, or any two of them, do proceed, after the death of my said wife, to divide my said estate into the requisit number of equal shares, as hereinbefore in this clause of my will provided, and to apportion the same among and to the persons herein named and desig-
65 nated, either by partition of property or sale thereof, and division of the proceeds among the persons, and in the manner and proportions provided in this clause of my will, as they may deem best and proper. Lastly, I hereby constitute and appoint my wife, Marguerite Leclaire, executrix, and my friend, George L. Davenport, executor of this, my last will and testament. And it is my will that my said executor and executrix shall not be required to file any bond in executing the provisions of this will. And I hereby authorise and empower my said executor & executrix to employ an agent or agents to take charge of the business of my said estate, and to allow a reasonable compensation therefor, the amount being left to the discretion of my said executor & executrix. In testimony whereof I have hereunto set my hand and affixed my seal this 7th day of March, A. D. 1861.

(Signed) "ANTOINE LE CLAIRE.

"The above instrument was, at the date thereof, signed, sealed, pub-

lished, and declared by the said Antoine Leclaire, as and for his last will and testament, in the presence of us, who, in his presence, and at his request, and in the presence of each other, have hereto set our names as witnesses thereto.

(Signed) "JAMES McCOSH, *Davenport, Iowa.*
"J. E. STEPHENSON, " "
"J. H. MORTON, " "

"STATE OF IOWA, *Scott County, ss:*

"I, R. Linderman, judge of the county court of said county, do hereby certify the foregoing to be a true, correct, and complete copy of the last will and testament of Antoine Leclaire, late of the city of Davenport, in said county, deceased, said copy of said last will & testament having been taken from the original on file and of record in said court. In testimony whereof I have hereunto set my hand and affixed the seal of said court this 5th day of November, 1861.

[L. S.] "R. LINDERMAN,
"*Judge of County Court, Scott County, Iowa.*"

66 Your orator further shows that said will has been probated before the county judge of Scott County, Iowa, according to law, & that said Marguritte Le Claire & George L. Davenport have been appointed by the county court of Scott County, Iowa, executors of the estate of said Antoine Le Claire, deceased, & have appeared and entered upon the discharge of their duties as executrix & executor of said estate.

Your orator further shows that said Marguerite Le Claire is a resident of Scott County, Iowa, and that the names, ages, & residences of the other devisees, now living, of the said Antoine Le Claire, deceased, are, so far as he has been enabled to ascertain the same, as follows:

First. Francis Le Claire, brother of said deceased, & his children, Eulalie, Francis, & Antoine, and Henry, all adults, reside at Portage des Sioux, Missouri; & his son Joseph A. Le Claire, who is adult, resides in Davenport, Iowa.

Second. David A. Le Claire, brother of deceased, who is adult; his son Antoine James, who is adult; and his children, Francis Napoleon, George Antoinette, & Mary, who are minors, all reside in Davenport, Iowa.

Third. Louis Le Claire, (son of Alexis, brother of deceased,) a minor, resides in Davenport, Iowa.

Fouth. Entienne Bienvenue, adult, his son Stephen, & four other children, whose names and ages are unknown, and who reside at Portage des Sioux, Missouri.

67 Fifth. Adeline Hebert, formerly La Perche, formerly Bienvenue, who is adult, & her children Leon, Ellen, & Jerome La Perche, and her child Francis Hebert, minors, reside at Portage des Sioux, Missouri.

Sixth. Marguerite, John, William, Etienne, & Antoinette Saucier, all minors, who reside at Portage des Sioux, Missouri, children of Victoria Saucier, deceased.

And your orator further shows unto your honor that the said suit having become abated by the death of the said late defendant Antoine Le Claire, is, as he has been advised, entitled to have the said suit revived against the said Marguerite Le Claire, as executrix, and said George L. Davenport, as executor of said Antoine Le Claire, and against said Marguerite Le Claire, & the other parties named above as devisees

with her of the will of said Antoine Le Claire, in the same plight & condition as it was at the time of the abatement thereof by the death of said Antoine Le Claire.

To the end, therefore, that the said executrix & executor of said Antoine Le Claire, and the said Margueritte Le Claire, and the other devisees, as above shown and named, (so far as their respective names are known to your orator,) may show cause, if any they have, why the said suit and proceedings therein should not stand & be revived as
68 to them as executrix & executor & devisees as aforesaid, & be in the same plight and condition as the same were in at the time of the abatement thereof, and that the said suit and proceedings therein had may stand & be revived accordingly, may it please your honor to grant unto your orator the writ of subpœna to revive the same, issuing out of & under the seal of this honorable court, to be directed to the said executrix & executor and the devisees of said Antoine Le Claire as aforesaid, thereby commanding them, by a certain day to be therein expressed, personally to be and appear before this honorable court, & then & there to show cause, if they can, why the said suit & the proceedings therein had, should not stand & be revived against them, and be in the same plight and condition as the same were at the abatement thereof; and further to stand to & abide by such order and decree in the premises as to your honor may seem meet, and your orator will ever pray, &c.

"January 27th, 1862.

"LOWRIE & MILLER,
"& RANKIN & MILLER,
"*Att'ys for Pl'ff.*"

69 UNITED STATES OF AMERICA, *District of Iowa:*

I hereby certify that the foregoing papers are true & correct of a bill & amendments of a bill in equity, & other papers, in the cause of James May vs. the Executors of the Will of Antoine Le Claire & others, as the same remain on file in my office.

In testimony whereof I have hereunto set my hand & affixed the seal of the circuit court of the U. S., at Des Moines, this 27th Feb'y, 1864.

W. G. WOODWARD,
Clerk of the Circuit Court U. S. for Iowa.

(Indorsed:) James May vs. Antoine L No. 25.

Filed, J

J. C. BURNS, *Clerk,*
By EDW'D MUMM, *D'p.*

Amended bill filed Nov. 13, 1862.
W. G. WOODWARD, *Clerk C. C.*

70 (Indorsed:) No. 25, eq. James May v. Antoine Le Claire's ex'rs et al.

Filed Oct. 21, 1864.

W. G. WOODWARD,
Clerk C. C. U. S.

Filed with com'r Feb. 29th. 1864.

71 UNITED STATES OF AMERICA, *District of Iowa:*

I hereby certify that the annexed thirty-one leaves of writing contain a true & complete copy of the several answers of John P. Cook, Ebenezer Cook, Louis C. Dessaint & George L. Davenport, in their own right, and of George L. Davenport & Marga'et Le Claire, as executors of the last will of Antoine Le Claire, deceased, in the cause of James May v. the said Geo. L. Davenport and Margaret Le Claire, executors, &c., & others, pending in the circuit court of the United States for the district of Iowa, as the same are of record in my office, & that the within are all the answers which are on file in my office in the above cause.

In testimony whereof I have hereunto set my hand & affixed
72 the seal of the said circuit court, at Des Moines, this 7th day of November, A. D. 1863.

[SEAL.] W. G. WOODWARD,
Clerk of Circuit Court of the United States for Iowa.

[Five-cent internal revenue stamp affixed and canceled.]

73 District court of the United States for the district of Iowa.—Southern division.

JAMES MAY
vs.
ANTOINE LE CLAIRE & OTHERS. } In equity.

The answer of John P. Cook, one of the defendants, to the bill of complaint of James May, complainant.

This defendant, reserving to himself all right of exception to the said bill of complainant, for answer thereto saith that whether the said Antoine Le Claire had, prior to the year 1859, become largely or at all indebted to the said May as alleged in said bill, this defendant does not know of his own knowledge, and has no knowledge about the same other than the oft-repeated declarations of said Le Claire made to this defendant, denying any such indebtedness, and from the fact known to this defendant, that said Le Claire held the promissory note of said May given and dated after the alleged indebtedness charged by said May accrued, which note this defendant at one time had in his possession, and the same is now, as he is informed & believes, in the possession of said Le Claire's representatives. And upon the said information this defendant believes and avers the truth to be, that said Le Claire owed said May nothing whatever at the time of the making of said agreement between them in said bill mentioned, and he upon said information and belief denies the said allegation of indebtedness from said Le Claire to said May, in said bill contained, to be true.

This defendant saith that he believes it to be true that a written agre-
74 ment or contract, similar to that set forth in said bill, was in fact signed and executed by the said Le Claire and May, but for greater certainty therein he craves leave to refer to the said writing when the same shall be produced. But this defendant, upon information and belief, denies that the proposition on the part of said May in said writing contained was made by said May to said Le Claire at the solicitation or instance of said Le Claire as in said bill alleged, but, on the contrary, believes and avers the truth to be that the said May, by urgent importunity, and by getting the said Le Claire apart from all his freinds and advisers, by whose advice and council he, the said Le Claire, was in the habit of being guided, and on which he relied in the transaction of

important business, & by there and then threatening him with harrassing litigation, & especially with ecclesiastical censures and punishments, (the said May and Le Claire being both members of the Roman Catholic church,) and by other fraudulent practices upon the fears and feelings of the said Le Claire, persuaded and induced the said Le Claire to sign the said written agreement, which he otherwise would not have done.

This defendant admits it to be true that the said Le Claire made the deed to A. H. Davenport, of which a copy, marked Exhibit B, is annexed to complainant's bill, and that said Davenport executed thereupon to said Le Claire the mortgage and the notes therein described, of which a copy is annexed to said bill, marked Exhibit "C." This defendant further saith that he believes it to be true that after the delivery of said notes and mortgage to said Le Claire, said A. H. Davenport placed in the hands of said Le Claire a number of notes due him from divers parties, to be held as collateral security for the payment of said notes made by said Davenport to said Le Claire. But whether Exhibit "E," attached to complainant's bill, is a true list of said notes, this defendant has no knowledge or information, and can neither admit nor deny the same.

This defendant believes it to be true that the said mortgage & notes made by said Davenport to said Le Claire and the notes placed as collateral security therefor by said Davenport with said Le Claire, are the instruments referred to in the said writing between said May and
75 said Le Claire as to be transferred by said Le Claire to said May.

And as to whether the particular description of land set forth in complainant's bill, and alleged by him to be true descriptions of the land on the island and on the Iowa shore of the Mississippi River referred to in said written proposition from May to Le Claire are or are not true descriptions of said land referred to in said proposition, or whether they correctly or at all designate and describe the land so referred to, this defendant has no knowledge, information, or belief, and can neither admit nor deny the same.

And as to whether the said parcels of land are of the value of $2,000 00, or thereabouts, this defendant has no knowledge, but he believes the said value set upon said land in complainant's bill to be greatly exaggerated.

This defendant admits it to be true that the "Rose Bank" farm, mentioned in the said written proposition from said May to said Le Claire, is described as alleged in complainant's bill, and says he believes it to be true that the said farm was, in March, 1859, worth, or estimated to be worth, from $10,000 to 12,000, but he denies, on information and belief, that it is now worth that amount.

This defendant admits that on the 8th day of March, 1859, there existed upon the said farm the two incumbrances set forth in complainant's bill, to wit, the mortgage to George F. Kettell and the deed of trust to Charles Powers.

This defendant says he believes it to be true that upon the execution of said written agreement between said May and said Le Claire, said Le Claire entered upon possession of said farm, but he absolutely denies that said Le Claire has from that time continued to hold, possess, or enjoy the same, as alleged in said bill, or that he continued to hold, possess, or enjoy the same after the sale of said farm by said Charles Powers, under said deed of trust to Louis C. Dessaint, as alleged in said bill; but, on the contrary, he avers the truth to be, that the said farm was at the time of said sale to said Dessaint in the actual possession of a tenant holding the same under said Le Claire, and that upon said sale

said Le Claire surrendered to said Dessaint all control or dominion over said farm, or the rents and profits thereof, and the said Dessaint then assumed and took the control and management thereof, and said,
76 Le Claire ceased to have any control of or interest in the said farm, or the rents and profits thereof, and has never since had any such control or interest.

The defendant admits that after the making of said written agreement between said May and said Le Claire said May deposited with Cook & Sargent, bankers at Davenport, Iowa, a deed conveying said farm to said Le Claire, and that said Le Claire deposited with said Cook and Sargent the mortgage & notes aforesaid of A. H. Davenport and the collateral notes aforesaid; but this defendant denies all knowledge or information of any verbal arrangement in reference to such deposit between said May & Le Claire such as is alleged in complainant's bill, or of any arrangement other than is expressed in Cook & Sargent's receipt given at the time for said papers, a copy of which is hereto annexed, marked Exhibit "A."

This defendant admits that the defendants Ebenezer Cook, Geo. B. Sargent, and himself were members of said firm of Cook & Sargent, but he avers that John C. Davie was also a member of said firm.

This defendant saith that whether or not shortly after the making of said agreement with Le Claire, said May commenced making arrangements to have the incumbrances upon said farm removed, and whether or not said May had an interview with said Charles Powers, at which said Powers gave said May to understand and believe that he (Powers) would lend his influence and assistance to said May to assist him to raise money to remove said incumbrances, this defendant has no knowledge or information, & can neither admit nor deny the same. But this defendant, upon information & belief, denies that said Powers assured said May that he would not enforce a sale under said trust deed in case the said May should fail to pay off and discharge the debt secured thereby.

This defendant denies that said May had any real estate in the county of Scott which was not heavily encumbered by judgments, and, upon information and belief, denies that he had any "large and valuable landed possessions in Illinois, Pennsylvania, and other States," as alleged in said bill, or any "credits or sums of money due him," to any large amount, which were good or collectable.

77 This defendant admits that said May "found he could not raise the money needed for the purpose aforesaid," but saith that he believes that this was owing not so much to the "crippled condition" of the money market in the West following the comercial revulsion of 1857–'8," as to the "crippled condition" of his (May's) finnances, and his utter pecuniary irresponsibility and insolvency.

This defendant, upon information and belief, denies that said May found a party in Pittsburgh, or elsewhere, who was willing to advance the money necessary to pay off and remove the said trust deed and mortgage, and denies that said May made any arrangement with any one which would, in the month of July, 1859, or at any other time, have secured the payment of said incumbrances, "but for the inequitable interference and fraudulent conduct of said Le Claire and the other defendants to this suit, especially" of this defendant. And this defendant absolutely and totally denies that either this defendant, or said Le Claire, or any of the other defendants herein, were guilty of any interference, either "inequitable" or otherwise, or of any "fraudulent conduct," or

did anything in any way to prevent or hinder said May from paying off the said incumbrances if he had the means & intent so to do.

This defendant admits that he is an attorney & counciller at law, and that he was at the time in question acting as the attorney of said Le Claire, but totally denies that he acted as such attorney or in any other character or capacity, or at all "in the premises," to wit, in the doing or procuring of any act whereby said May might be hindered or obstructed in paying off said incumbrances on said farm.

This defendant absolutely denies that he, and, upon information and belief, denies that any of the other defendants herein, had "formed the inequitable & erroneous opinion that if they could procure a sale of said Rose Bank farm under said trust deed to said Powers and get the control of the title thereto, and prevent said May from redeeming therefrom, he would be barred & cut off from each and every right and benifit secured to him by this said settlement and compromise with said Le Claire, and that said Le Claire would be thereby acquited, re-
78 leased, and discharged of all his 'liabilities and indebtedness' to said May, forever," or any other "inequitable and erroneous opinion" on the subject.

This defendant absolutely and totally denies that he ever conspired, combined, confederated, or agreed with the said Le Claire, or with either or any of the other defendants herein, or with any other person or persons, for the purpose of bringing about a sale of said farm under said deed of trust, or of hindering or obstructing said May from paying off the same and redeeming the said farm therefrom, or of doing any other act or thing in relation thereto to the injury or prejudice of said May.

He denies all knowledge or information of any such confederation or agreement between any of the defendants herein, or between either or any of such defendants and any other person or persons, and, upon information and belief, denies that any such confederation or agreement was ever made or entered into by either or any of said defendants.

This defendant absolutely denies that he ever called upon said Charles Powers, and by his persuasion and influence, or in any way, induced said Powers to advertise for the enforcement of said trust deed, and he absolutely denies that he ever used any means whatever to influence, persuade, or induce said Powers to take any steps for the enforcement of said trust deed.

He admits that the advertisement marked "Exhibit G," and annexed to said bill, was in fact published, or caused to be published, by the said Powers, but, upon information and belief, avers the truth to be that said Powers, having been induced by said May to go to Pittsburgh, under the pretence on the part of said May, that he (May) would then and there pay to said Powers the amount due upon the said deed of trust, but finding after several days' stay at said Pittsburgh that all the said promises and pretences on the part of said May were utterly delusive, and that said May was utterly unable to raise the money to pay off said trust deed, he (Powers) wrote or sent a message to his partner William McLean, at said Davenport, (in pursuance of a previous arrangement between said Powers and McLean,) to cause the said advertise-
79 ment to be published, which was accordingly done by said McLean, and wholly without the agency or interference of this defendant, who knew nothing of the matter until after the said advertisement was published.

This defendant does not know, but thinks it exceedingly probable, that about the time when said advertisement bears date, said May met said Powers in Pittsburgh, and that said Powers then conversed with said

May in reference to said trust-deed and mortgage incumbrances, and desired said May to pay said trust-deed incumbrance. But whether or not said Powers then informed said May that he had ordered an advertisement for the enforcement thereof, or whether in fact said Powers had then ordered said advertisement, this defendant has no knowledge, but believes that the advertisement had not in fact been then ordered. But this defendant, on information and belief, denies that said Powers then gave said May distinct and special assurance, and promised that no foreclosure or sale should be made of said premises in case the said May should not shortly pay the debt secured by said trust deed.

This defendant positively denies that, after said Powers had returned from Pittsburgh to Davenport, this defendant called upon him and requested and urged him not to have or influence any bidders to come to the sale of said farm under said trust deed, or that he used any means whatever, or requested said Powers, or any other person, to use any means, to prevent bidders from attending said sale. This defendant admits that, some three to five days before said sale was advertised to take place, he called upon said Powers in relation thereto, at the request of, and as attorney for, the def't Louis C. Dessaint, (who had seen the said advertisement and desired to purchase the said farm,) to ascertain the amount of the lien or claims held by said Powers on said farm, and did tell said Powers that said Dessaint wanted to purchase said farm, provided he could do so for the amount secured by said deed of trust; to which said Powers replied that it would be sold subject to the said mortgage, which was a prior lien thereon. This defendant reported this to said Dessaint, and thereupon the said Dessaint agreed that
80 if he should become the purchaser at said sale for a less amount than that secured by said deed of trust, he would pay to said Powers the full amount of said debt so secured, the said Powers assigning to him the note evidencing said debt, and would also pay the said prior mortgage, the said Powers procuring the same to be assigned to him, (Dessaint.) This agreement of said Dessaint was communicated to said Powers by this defendant, as Dessaint's attorney, and said Powers thereupon agreed if said Dessaint should become the purchaser, and should pay the said amounts, to assign said note and mortgage to him.

The foregoing, this defendant avers, was the only agreement made with said Powers in reference to said sale, of which he has any knowledge or information, and he positively denies that he told Powers that in case said property was sold to said Dessaint, he (this defendant) would see that the money was paid on said bid, or that if Dessaint or himself should become the purchaser, he (this defendant) would see that the trust-deed claim should be paid off, or that the mortgage should be paid off, or that it was agreed between Powers and this defendant that in case this defendant or said Dessaint should become the purchaser under said sale, this defendant should liquidate and satisfy the whole amount, or any amount due on said trust deed or mortgage.

This defendant denies that he ever entertained or expressed to said Powers, or any one, any intention or idea of himself becoming the purchaser at said sale, or of himself paying or seeing to payment of any part of the purchase-money of such sale. He avers the truth to be, that he acted in the whole matter, so far as he acted at all, as the agent and attorney of said Dessaint, and at his request and instance.

This defendant further saith that as to whether said May and his freind from Pittsburgh went to Davenport on the day previous to the date fixed for the sale of said farm with means to pay the amount due

on both said trust-deed and mortgage incumbrances, and as to whether said May's object in going there at that time was for the purpose of paying and discharging said two incumbrances, this defendant has no
81 knowledge or information, except the following, to wit: Defendant avers that a day or two before the day of sale under said deed of trust said Powers called on this defendant and told him that said May had returned from Pittsburgh with a freind who had six thousand dollars which he would let May have to pay on said mortgage and deed of trust, provided said May would give him (said freind) as collateral security for the said loan of $6,000 00, the two of said notes of A. H. Davenport to said Le Claire, (before mentioned,) for $7,000 00 each, first maturing, and that he, Powers, called to know if Cook & Sargent, as custodians of said notes, would give them up to said May in case he (May) would cause such payment to be made on said mortgage and deed of trust. This defendant replied that Cook & Sargent had no right to do so without the consent of Mr. Le Claire; that Cook and Sargent had given their receipt for the papers and were bound to hold them according to the terms of the receipt, unless both parties agreed otherwise. Said Powers replied that he had agreed to take the $6,000 00, and extend the balance for a short time, but that said May could not get it of his said freind without giving the said two Davenport notes as security.

Defendant further saith that on the same day, or the day after the said "friend" of said May called on this defendant and told him that he was an attorney at law, resident at Pittsburgh, that his client, living at or near Pittsburgh, had agreed to loan said May $6,000 00, and that May was to give him the said two first of said $7,000 00 notes of said A. H. Davenport as security, and that he (said attorney) had come out to arrange the matter, and was surprised to find that May was not entitled to the said Davenport notes until all the liens on said Rose Bank farm were removed by said May; that his instructions were not to let May have the said money without the said security. And upon the said information, & his belief founded thereon, this defendant denies that said May had provided means to pay both the amount of said mortgage & deed of trust, and denies that he had made any arrangements for procuring more than the sum of $6,000 00, which was much less
82 than the amount due on said deed of trust alone, and denies that he had made any arrangements for obtaining the said $6,000 00, except on condition of giving as security therefor the said notes of A. H. Davenport, which he was not entitled to, and could not obtain without first paying off and removing all liens and incumbrances on said farm, including the said mortgage, deed of trust, and various judgements to a large amount, which encumbered the same. This defendant further saith that whether said May immediately or soon after his arrival called on said Le Claire and informed him that he had come prepared to pay said trust-deed & mortgage claims, and enquired of said Le Claire whether he (Le Claire) would then give up to him the said Davenport mortgage and notes if he (May) would give him satisfactory security or indemnity for the payment of the judgement incumbrances on said farm, and whether said Le Claire declined to give any answer in the premises, except to refer said May to this defendant, as his attorney, this defendant has no knowledge or information, and can neither admit or deny the same. This defendant has no doubt it is true that said May was "exceedingly anxious to get possession of the Davenport mortgage and notes," but, on information and belief, he denies that said May could have readily or at all furnished said Le Claire

satisfactory security or indemnity for the payment of said judgement incumbrances.

This defendant further saith that he is informed and believes that the $6,000 00, with which the said "freind" of said May was provided as aforesaid, was in the shape of drafts—whether approved or not, this defendant is ignorant, and he denies that said May had provided any means for the payment of said trust-deed and mortgage incumbrances other than as hereinbefore stated. That whether said May and his said "freind," on the day designated, and near the hour designated by the said advertisement for the sale of said farm, called at the office of said Powers, this defendant has no knowledge or information, but he believes, if he so called, it could not have been with any bona-fide intention of paying said trust deed and mortgage, because the said May had in fact no means or ability to pay the same and had never contemplated
83 or intended paying at that time more than the said $6,000 00 on said incumbrances, and could not then pay that for the reason that he could not give his said "freind" the security required therefor, as hereinbefore stated.

This defendant further saith that what, if any, conversation occurred between said May and said Powers at said call, if any such call was made, this defendant has no knowledge or information, and as to what (if anything) said Powers said to said May when he withdrew from said May's presence, or whether he so withdrew at all, and whether a note or writing was handed to Powers, this defendant has no knowledge or information, and can neither admit nor deny the same.

But he positively denies that if said Powers so withdrew from said May, it was under the influence, corrupt or otherwise, of this defendant, or at his instance.

This defendant has now no recollection of having written or sent any note or other writing to said Powers on that day, and he positively denies that if he did write or send any such note or writing, it was of the character or for the purpose alleged in complainant's bill, to wit, to induce said Powers fraudulently and clandestinely to withdraw himself from the company of said May for the purpose of selling said farm to said Dessaint or this defendant without the knowledge of said May, or of any similar character or purpose.

That so far is the said allegation of the complainant from being true, that the fact and truth is, that this defendant had no knowledge or information whatever that said Powers was then in the company of the said May, if, indeed, such was the fact.

That this defendant believes that if he sent any message, verbal or written, to said Powers, it was merely to the effect that he was ready to go to the court-house to attend said sale, and was sent in pursuance of a prior understanding between this defendant and said Powers, (for the purpose of preventing unnecessary delay or waiting, at the time appointed for said sale, on the part of either,) that either said Powers should notify this defendant when he was ready to proceed with said sale, or that this defendant should notify said Powers when he was ready to attend the same; said Powers and this defendant being both men actively engaged in business, and not wishing unnecessarily to lose time.

84 And this defendant positively denies that said communication (if any was sent, of which he has no recollection) was sent with the intent or purpose of concealing the said sale from said May, or having the same take place without his knowledge.

And this defendant positively denies that if said Powers did

withdraw from said May's company for the purpose of making said sale without said purpose being known or communicated to said May, (which this defendant believes to be wholly untrue,) this defendant had at any time any notice or knowledge whatever of such fact, or that the same was done through any procurement, suggestion, or influence of this defendant. This defendant further saith that he admits that he attended said sale, but does not recollect whether he went thither on foot or in a buggy, nor whether, if the latter, the said Powers accompanied him, though he thinks it by no means improbable that he did so.

He further admits that the said Powers offered said farm for sale upon the terms in the complainant's bill alleged.

This defendant positively denies that any plan whatever had been arranged, or was conducted, by the agents or attorneys of said Le Claire, either stealthily and fraudulently, or otherwise, or by the co-operation or confederacy of said Le Claire, or of this defendant, or of any of the defendants herein, to effect the sale of said property, or secure the purchase of it to some one of the attorneys or confederates of said Le Claire, and denies that he did anything whatever as the agent, attorney, or confederate of Le Claire in relation to the sale of said property, or that Le Claire knew anything about the matter before or since.

He denies positively the existence of any confederacy or agreement whatever, having in view the said sale or purchase.

He further positively denies that no persons were there to bid on said property, except this defendant and said Dessaints, and avers the fact to be that several other persons were present, and did bid on said property besides this defendant and Dessaint.

He admits that at said sale the said farm was struck off by said Powers to said Dessaint for the sum of $5,000 00, that being the highest bid therefor. This defendant believes it to be true that a deed
85 was executed & delivered by said Charles Powers, conveying said farm to said Dessaint, for the purpose of carrying into effect said sale, but is unable to say whether Exhibit "H," attached to the bill herein, is a true copy thereof, and for greater certainty craves leave to refer to said deed when produced. Whether this defendant prepared said deed or not he cannot say with certainty, but has no recollection that he did so.

This defendant denies that said deed was delivered to him by said Powers on the same day of said sale, to wit, July 20th, 1859, but on the contrary avers that it was not delivered until the next day, to wit, July 21st, 1859, and that it was not delivered till that time, for the following reasons, to wit, after the said sale on the 20th July, said Powers came to this defendant and said that said May requested him (Powers) not to deliver the deed, and that he, May, would pay off the debt that day or the next morning; that he, Powers, would do so, provided Dessaint would consent thereto. This defendant informed said Dessaint thereof, who thereupon consented to such delay in the delivery of the deed, which was accordingly delayed till the next day, when, said May having entirely failed to pay said Powers the debt as promised, the deed was delivered by Powers to Dessaint.

This defendant admits that he personally paid to Powers the purchase money on said sale on the 21st of July aforesaid, but denies that he did it on his own behalf or with his own funds, or otherwise than as agent and attorney for said Dessaint, and with his, said Dessaint's, funds.

He avers the truth to be that said Dessaint, on the said day, requested him to act as his attorney in paying to said Powers the amount of his (Dessaint's) said bid, together with the balance that would be due

on the note secured by said deed of trust, and to see that the deed was properly made & executed by said Powers to said Dessaint, and for that purpose said Dessaint then furnished this defendant with his (Dessaint's) check, drawn on the State Bank of Iowa, Merchants' Branch, at Davenport, for the sum of $7,440 00, which said check was on the
86 same day duly honored and paid by the said bank out of the proper funds of the said Dessaint therein on deposit, and not one dollar thereof was furnished to said Dessaint by this defendant, nor, as he is informed and verily believes to be true, by said Le Claire, or any other defendant herein.

This defendant denies that he paid said Powers the said sum of $7,440 00, or any part of it, in a certificate of deposit on Cook & Sargent. He admits that the said sum was so paid by him partially in bank-notes, to wit, the sum of $2,000, and partly by a check on Cook & Sargent, which check was afterwards duly paid by said Cook & Sargent on presentation thereof. And he further avers that, at the time of said payment, said Cook & Sargent held the checks of Tallman, Powers & McClean, (a banking firm at said Davenport, in which said Chas. Powers was the principle acting partner,) which check was given for money loaned said Tallman, Powers & McLean by said Cook & Sargent, as they were in the habit of doing from time to time as the said Tallman, Powers & McLean had occasion therefor, and taking the checks of said Tallman, Powers & McLean, drawn on themselves therefor. And this defendant availed himself of this opportunity to obtain payment of said check from said Powers, who accepted the same instead of cash, to the amount of $1,500 00, in payment of the said sum of $7,440 00, or rather paid said check to this defendant out of the said sum of $7,440 00 paid to him by this defendant.

And this defendant avers positively & of his own knowledge, that the whole of said sum of $7,440 00 was actually and in good faith paid out of his own proper funds by said Louis C. Dessaint, as the consideration for said sale and deed to him by said Powers.

This defendant admits that afterwards, to wit, on or about July 28, 1859, he purchased of said Powers the said Kettell mortgage and note made by said May which were procured by said Powers, to be assigned and transferred to this defendant; and that he gave said Powers therefor his own note on the said 28th July, 1859, for $3,255 87, which note was endorsed by said Ebenezer Cook & Antoine Le Claire for the accommodation of this defendant, and was made payable three months from its date, at Clark, Dodge & Co.'s, New York, which note this
87 defendant paid at maturity, and has it now in his possession.

This defendant positively denies that any act done by him was done or intended for the purpose and object of making the consumation of said agreement between said May & Le Claire impossible on the part of said May, or to defraud said May in any way.

And this defendant denies that the sum of $26,000, or any other sum, was due said May under said agreement.

This defendant believes it to be true that said May did cause to be recorded in the recorder's office of Scott County an instrument of a purport similar to Exhibit "I," attached to said bill, but for greater certainty craves leave to refer to the same when produced.

But he is advised and believes that the recording of said instrument was of no force or virtue whatever to affect the rights of any person whomsoever, inasmuch as said recording was without authority of law, and totally null and void.

This defendant positively denies that said Dessaint did not in fact

pay anything on account of his said purchase, or that his name was used by this defendant as attorney for said Le Claire, or otherwise as an instrument through whom the said pretended title and purchase under said trust deed could be as it were under cloak and cover transferred to the order of said Le Claire, or of his said attorney, or the defendants herein, or any of them; on the contrary, he avers that the said Dessaint actually, in good faith, and out of his own proper funds, paid the sum of $7,440 00 on account of said purchase, as hereinbefore stated at large; that the said purchase was made by said Dessaint for his own benifit & on his own account; and that neither said Le Claire or any other defendant herein had any interest whatever in the said purchase or title thereby acquired.

This defendant admits that on or about July 28, 1859, said Dessaint conveyed said farm to said Ebenezer Cook by a quitclaim deed, but he positively denies that this was done at the instance of this defendant, but avers, on the contrary, that he remonstrated with his said brother against purchasing said property of said Dessaint on account of the tightness of the money market.

88 He positively denies that said conveyance was made by said Dessaint to said Ebenezer Cook without consideration, but, on the contrary, avers that said Ebenezer Cook paid said Dessaint therefor the sum of seven thousand seven hundred dollars, or thereabouts.

This defendant admits that said Cook and Sargent failed in business in December, 1859, & that said Ebenezer Cook & wife conveyed said premises to Geo. L. Davenport by deed bearing date December 16th, 1859.

This defendant denies that said George L. Davenport had or could have had notice at the time of said conveyance to him of the fraudulent practices alleged and pretended to have taken place in the complainant's bill, inasmuch as said pretended fraudulent practices never had any existence except in the immagination of complainant.

This defendant believes it to be true that said George L. Davenport did file his petition in the district court of Scott County against said May, as alleged in said bill, but he positively denies that it was done at his (this defendant's) instance, but, on the contrary, avers that he did not in fact know that said Davenport had commenced said proceedings until February, 1860.

This defendant has been informed that said May took the deposition of said Charles Powers in said proceeding, but whether in due form of law or not, and whether Exhibit "M," attached to the bill, is a true copy thereof this defendant is ignorant. But he totally denies that said deposition (if the same was ever taken) can be used or read in evidence in this suit for any purpose whatever, not having been taken therein, nor in any proceeding to which this defendant, or any of the defendants herein, except said Geo. L. Davenport, was a party, and avers that the said Exhibit "M" is most impertinently and unwarrantably annexed to said bill, and ought to be stricken therefrom.

This defendant is informed and believes that the said Geo. L. Davenport's said suit was dismissed after the death of said Powers, (which death he admits occurred.)

89 This defendant has no knowledge or information as to the reasons or motives of said Davenport for dismissing his said suit, and can neither admit nor deny that they were such as charged by complainant.

This defendant admits that said Le Claire sent to said May a notice similar to Exhibit "N," attached to the bill, but for greater certainty

craves leave to refer to said original paper when produced. This defendant positively denies that either he or said Dessaint agreed with said Powers to induce him (Powers) so to conduct said trust-deed sale as to prevent this defendant or said Dessaint to become the purchaser of said Rose Bank farm in exclusion of all other persons, to pay off and discharge the whole amount of said trust-deed and mortgage incumbrances. On the contrary, he avers that the agreement was that if Dessaint became the purchaser of the farm at the trust-deed sale, said Powers should procure the said mortgage incumbrance to be assigned and transferred to him, said Dessaint.

And this defendant denies that by the terms of the said sale the purchaser threat assumed payment of said mortgage, or became under any obligation to release or discharge said May from his personal liability to pay the same.

He admits that he has since brought suit upon said mortgage note against said May in the circuit court of the United States for the northern district of Illinois, and avers that before the filing of the complainant's bill herein he recovered judgement in said suit against said May by default, no defence having been interposed therein.

This defendant admits that at the time said May executed said deed of trust, real estate commanded a higher price & readier sale at said Davenport than at present, but whether said city was then "growing exceedingly fast in the direction of said farm" this defendant is not particularly informed, nor, as at present advised, is he able to see the particular materiallity of said allegation.

This defendant is not particularly informed by what special
90 motives (if any) said May was actuated in causing the said trust deed to be framed in the form in which appears to have been, whether by "any apprehension of untoward misfortune," or otherwise, but he believes the fact to have been that said May had no special motives whatever, and had nothing at all to do with the special provisions of said deed, inasmuch as the same is in the ordinary form of the printed blank deeds ordinarily sold and used at that time, and this defendant denies that it is in any way material what said May's special motives (if any) were in the premises.

He denies that said deed, by its true construction, imperatively requires the trustee to sell the land in parcels, but insists that it is left to the discretion of the trustee whether to do so or not, & that no abuse of said discretion is pretended or alleged in the bill.

And this defendant denies that said May would have removed the incumbrances from said farm but for the inequitable conduct and interference of said Le Claire and this defendant in procuring a sale of said farm, and denies that any such inequitable conduct or fraudulent interference ever took place or had any existence.

And this defendant, having fully answered the said bill, prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

(Signed) JNO. P. COOK.

(Signed) JNO. N. ROGERS,
Sol'r for Def't John P. Cook.

UNITED STATES OF AMERICA,
State of Iowa, County of Scott, ss:

John P. Cook, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he is acquainted with the contents

of the foregoing answer; and that the same is true of his own knowledge, except as to the matter therein stated on information & belief, and as those matters he believes it to be true.

(Signed) JNO. P. COOK.

91 Subscribed and sworn to by the said John P. Cook before me this eleventh day of November, A. D. 1861.

(Signed) JNO. F. DILLON,
Judge of the 7th Judicial District, Iowa.

EXHIBIT A.

Rec'd of Antoine Le Claire five promissory notes of seven thousand dollars each, executed by A. H. Davenport, and dated 7 May, A. D. 1857, and payable respectively on the first day of January, A. D. 1858, 1859, 1860, 1861, & 1862; on one of which is endorsed a payment of three hundred & fifty dollars; & received also certain promissory notes against sundry persons particularly described in a receipt of said Le Claire to said A. H. Davenport, which latter notes were given to said Le Claire by said Davenport as collateral security for the payment of said notes so executed by said Davenport. We also have the mortgage of Davenport to secure said first-named notes.

Now, when James May shall pay off and release all mortgages, judgments, and other liens upon "Rose Bank" farm, (so called,) situated north of Duck Creek, in Scott County, Iowa, and shall deliver to said Le Claire a good & sufficient deed therefor, in accordance with a contract in writing, signed by said Le Claire and May on the 8th of March, 1859, provided the same is done within one year from the 8th of March, inst., then and in that case we are to deliver to said James May all of the foregoing notes and mortgage.

On delivery of the collateral notes aforesaid, said May shall execute a receipt to the said Davenport for the same, according to the existing contract between Le Claire & Davenport.

March 10th, 1859.

(Signed) COOK & SARGENT.

(Endorsed:) Filed Nov'r 14th, 1861.

J. C. BURNS, *Clk*,
By EDW'D MUMM, *D'p'y*.

92 (Indorsed:) Copy. U. S. district court, district of Iowa, south. division. James May vs. Antoine Le Claire et als. Answer of John P. Cook, one of the defendants.

Filed Nov. 14th, 1861.

J. C. BURNS, *Clk*.
By EDW. MUMM, *D'p'y*.

Filed Nov. 13th, '62.

W. G. WOODWARD, *Clerk*.

Jno. N. Rogers, sol. for def't.

93 *Copy.*

District court of the United States for district of Iowa, southern division.

JAMES MAY
vs.
ANTOINE LE CLAIRE & ALS. } In equity.

The answer of George L. Davenport, one of the defendants, to the bill of complaint of James May, complainant.

This defendant, saving & reserving to himself all and all manner of exceptions to the said bill for the manifold insufficiences thereof, for answer to so much thereof as he is advised that he is bound to answer, saith:

That he is informed and believes that about the time alleged in said bill the said May & Le Claire made an agreement or contract of some kind or character with each other, but what were the particular terms thereof, and whether they were such as alleged in said bill, and whether the alleged copy thereof set forth in said bill is in fact a true copy, this defendant has no knowledge or information, and can neither admit nor deny the allegations of said bill in reference thereto; and whether the said Le Claire was, at the time of the making of such agreement, largely or at all indebted to said May, this defendant has no knowledge or information, and can neither admit nor deny the same.

This defendant admits that said "Rose Bank" farm is correctly described in said bill, and believes the same was worth in March, 1859, about $12,000 00; but on information and belief he denies that the same is now worth that sum, or more than about the sum of $7,000.

This defendant admits it to be true that the said Kettell mortgage & deed of trust to Charles Powers existed as incumbrances on said farm, as alleged in said bill.

This defendant positively denies that said Le Claire, from the time of the making said agreement with said May to the time of commencing this suit, held, possessed, or enjoyed said farm as of his own right & property, or at all; on the contrary, this defendant alleges the fact to be, that when this defendant purchased the said farm from Ebenezer Cook, in December, 1859, the same was in the actual occupation
94 of certain tenants who continued in the occupation of the same untill March, 1860, this defendant having been unable to get them to quit possession until that time; that they then quitted and surrendered up possession of said farm to this defendant, who has ever since had the possession and enjoyment thereof. And he denies that said Le Claire has had any possession or enjoyment whatever of said farm, or of any rents or profits thereof, subsequent to the time when the same was conveyed to this defendant by Ebenezer Cook; and as to any prior occupation or enjoyment thereof by said Le Claire this defendant has no knowledge or information.

As to whether said May, shortly after his said agreement with Le Claire, commenced making arrangements to have the incumbrances removed from said farm, & as to whether he had an interview with said Charles Powers, & whether said Powers gave said May to understand and believe he would lend his influence & assistance to said May in said May's efforts to raise money to remove the incumbrances from said farm, and whether he assured said May that in the mean time he

would not enforce a sale on said trust deed, this defendant is wholly ignorant, having no knowledge or information whatever in respect thereto.

This defendant, upon information & belief, denies that said May had any real estate whatever in the county of Scott, except what was encumbered for more than its value by mortgages, judgements, &c., or that he held any large or valueable landed possessions in Illinois, Pennsylvania, & other States, or any credits or sums of money due him to any considerable amount which were good or collectable. And this defendant avers his belief to be that the said May was at the time in question and is now wholly insolvent and pecuniarily worthless.

This defendant, upon information & belief, denies that said May made an engagement with a party in Pittsburgh, or elsewhere, to furnish him the amount necessary to pay off said mortgage & trust-deed incumbrances, or any engagement which would, in July, 1859, have secured the payment of said incumbrances but for the interference of said Le Claire, or of any of the defendants herein, or of this defendant.

He positively denies that he (this defendant) was guilty of any interference whatever in the matter; and, on information and belief, he denies that any of the defendants herein were guilty of any such interference.

95 And this defendant positively denies that ever "formed the inequitable & erroneous opinion" alleged in said bill to have been formed by said Le Claire and the other defendants herein, or any other inequitable & erroneous opinion in reference to the matter.

And this defendant positively denies that he ever conspired, combined, confederated, or agreed with the said Le Claire, or the other defendants herein, or any or either of them, or any other person or persons whomsoever, for the purpose of procuring said farm to be sold under said deed of trust, or of inducing said Powers to take any steps to enforce a sale under said deed of trust, or of procuring said farm to be sold to said Dessaint or John P. Cook, or to any confederate or freind of said Le Claire, or to do any act to hinder or prevent said May from paying off the incumbrances on said farm, or any of them, or to do any act to hinder or prevent said May from carrying out his said agreement with said Le Claire, or to do any act whatever to the injury or prejudice of said May in respect to the matters of his said bill.

And, upon information and belief, he denies that any such conspiracy, combination, confederation, or agreement for any or either of the said purposes was ever formed or had by or between any of the said defendants herein, or by any or either of them with any other person or persons.

And this defendant positively denies that if any such conspiracy, confederation, or agreement was ever formed or had, he at any time whatever had any notice or knowledge whatever thereof; and he specially denies that he had any such notice or knowledge at the time of his purchasing & taking a conveyance of said farm from Ebenezer Cook as hereinafter set forth. And this defendant positively denies that he himself, and, upon information and belief, denies that any or either of the defendants herein did any act whatever for the purposes aforesaid, or either of them; and, if any such act was done, he denies all notice or knowledge thereof at any time.

This defendant, upon information & belief, denies that said John P. Cook called upon said Powers, & by his persuasion & influence, and the influence of said Le Claire, or of any of the defendants herein, in-

96 duced said Powers to advertise for the enforcement of said trust

deed, and he positively denies that the same was done by his advice or consent, or that he at any time, and especially when he purchased and took a conveyance of said farm from Ebenezer Cook as aforesaid, had any notice or knowledge whatever thereof.

As to whether said May met said Powers in Pittsburgh, and what, if any, conversation then passed between them, and whether said Powers then gave said May any assurance that no foreclosure or sale should be made of said farm, this defendant has no knowledge or information whatever. He positively denies that if any such conversation occurred between them, as is alleged in said bill, or any such assurance was given by said Powers to said May, he (this defendant) at any time, and especially at the time of his purchase and taking a conveyance of said farm as aforesaid, had any notice or knowledge whatever thereof.

This defendant, upon information & belief, denies that after said Powers had returned to Davenport from Pittsburgh, or at any time, said John P. Cook called upon him and requested and urged him not to have or influence any bidders to come to the sale of said farm to be made under said trust deed And this defendant denies all knowledge or information of any such conversation or communication between said John P. Cook & said Powers in reference to the sale of said farm as are alleged in said bill, or of any such agreement in relation to the purchase of such farm by said Cook or Dessaint as alleged in said bill, or of any conversation, communication, or agreement between them in refference to such sale.

And this defendant positively denies that if any such conversation, communication, or agreement took place, the same was with his knowledge, or by his advice, procurement, or privity; and he positively denies that he ever, and especially at the time of the purchase and conveyance of said farm to him as aforesaid, had any knowledge or notice whatever thereof.

This defendant, upon information & belief, denies that said May went to Davenport previous to the sale of said farm under said deed of trust, with means to pay the amount due on both said trust-deed & mortgage incumbrances, or either of them. He avers, on information & belief, that said May had actually under his control or in his possession no means or funds whatever; that he had made a conditional bargain with his "friend from Pittsburgh" to loan him the sum
97 of $6,000 00 and no more; & that said May was, by the terms of said bargain, to give the said "friend" as security for said loan two notes of A. H. Davenport for $7,000 00 each, which he was to get from said Le Claire; and that the said bargain for said loan utterly failed and fell through because said May was unable to furnish the said agreed security. And this defendant positively denies that if said May in fact had the means to pay off said incumbrances, or either of them, or went to Davenport for the purpose of paying them, or either of them, off, he at any time had any notice or knowledge whatever thereof.

Whether said May, on the day designated for the sale of said farm under said trust deed, and near the hour designated for such sale, called upon said Powers, this defendant has no knowledge or information whatever.

He denies, upon information & belief, that if said May did so call on said Powers it was with any bona-fide intention of paying said trust-deed & mortgage incumbrances, or either of them, inasmuch as this defendant believes that said May had no means whatever of making such payment; and whether or not at such call any such conversation occurred between said May and said Powers as is alleged in said bill, and

whether or not, while they were conversing, a note or writing was handed to said Powers, and whether or not said Powers said he was called out on other business, & that said May would have to excuse his absence, or words to that effect, and whether or not said Powers left said May for the purpose of selling said farm without the said May's knowing of his said purpose, this defendant has no knowledge or information whatever.

And whether said note or writing so handed to said Powers (if any) was written or sent by said John P. Cook, this defendant has no knowledge or information whatever. This defendant, upon information & belief, denies that said note or writing (if any) was written or sent by said John P. Cook for the purpose of inducing said Powers clandestinely to withdraw himself from the company of said May, & sell said farm to said Cook or Dessaint, or to any one without the knowledge of said May. And, upon information and belief, he denies that said Cook exercised any influence or inducement whatever over said Powers to induce him so to withdraw himself from said May, or so to sell said farm. And this defendant positively denies that the same was done by his advice, consent, or procurement, or with his privity, or that he at
98 any time, and especially at the time of his purchasing and taking a conveyance of said farm as aforesaid, had any notice or knowledge whatever of any or either of such acts; and, if in fact the said Powers did withdraw himself from said May's company for the purpose of selling said farm without said May's knowledge, or did in fact sell said farm without May's knowledge, (as to which this defendant has no knowledge or information,) this defendant positively denies that he ever had any notice or knowledge whatever thereof. Whether said Powers proceeded to the office of said Cook, and whether said Cook had a horse and buggy prepared to conduct himself & said Powers to the court-house, this defendant has no knowledge or information, nor whether they got into said buggy and drove to the court-house, as alleged in said bill.

This defendant further saith that he was not present at the sale of said land under said trust deed, and has no information and knowledge as to what took place at said sale, except that he is informed and believes that the said farm was then and there sold in pursuance of said advertisement in said bill mentioned, by said Powers to said Louis C. Dessaint, but at what price it was struck off to said Dessaint this defendant is ignorant.

This defendant, on information & belief, denies that any plan whatever had been arranged or was conducted either stealthily and fraudulently, or otherwise, by the agents or attorneys of said Le Claire, or by his co-operation or confederacy, or that of any of the defendants therein, to effect a sale of said farm and secure the purchase of it to any confederate or attorney of said Le Claire; and he positively denies that any such plan was arranged or conducted by him, or by his co-operation or confederacy, with any person or persons whomsoever; and he positively denies that he at any time whatever had any notice or knowledge of any such plan.

This defendant has no knowledge or information whether said John P. Cook prepared the deed executed by said Powers to said Dessaint conveying said farm. He believes & avers it to be true that such deed was in fact executed by said Powers & delivered to said Dessaint; whether on the day of sale or a subsequent day this defendant is ignorant. This defendant has no knowledge or information whether said John P. Cook called on said Powers and paid him the amount of the

bid of said Dessaint on said sale, nor in what manner said payment was made. On information and belief he avers that the payment, whether personally made by said Cook or Dessaint, was made with said Dessaint's funds, and on his account.

99 This defendant believes it to be true that shortly after said sale of said farm said Kettle mortgage & note were assigned to said John P. Cook, but for what particular consideration he has no knowledge or information.

This defendant believes it to be true that said May caused to be recorded in the recorder's office of Scott County the notice marked Exhibit "I," attached to said bill, but this defendant positively denies that he (this defendant) had any notice or knowledge whatever of the existence or recording of said Exhibit "I" until after he had purchased said farm and taken his deed therefor from Ebenezer Cook; and he is advised and believes that the recording of said instrument had no force or effect to impart notice thereof to this defendant, or any person, inasmuch as the same was without authority of law, and was done after said May had ceased to have any title to said farm; and that the said record was and is wholly null & void.

This defendant, on information and belief, denies that said Dessaint did not in fact pay anything on account of his purchase of said farm, or that his name was used by said John P. Cook as attorney or agent for said Le Claire, as an instrument through whom said pretended title and purchase under said trust-deed sale could be, as it were, under cloak and cover, transferred to the order of said Le Claire, or his said attorney or defendants in this suit; on the contrary, this defendant avers, on information and belief, that said Dessaint actually and in good faith paid out of his own proper funds the whole amount due on said trust deed, ammounting to over $7,000 00 for said farm; & that he purchased the same in good faith for his own use and benifit, without any intention of transferring the said farm to said Le Claire, or any other defendant herein; & that neither said Le Claire, or any other of said defendants had any interest in or concern with said purchase.

And he positively denies that he at any time whatever had any notice or knowledge that the said Dessaint paid nothing for said farm, or of any such use of his (Dessaint's) name for the purpose of transferring the title of said land to the order or control of said Le Claire, or any other defendant herein, or of any interest or concern which said Le Claire or any other defendant herein, (save and excepting said Dessaint,) had in said purchase of said farm.

This defendant admits it to be true that said Dessaint conveyed said farm to Ebenezer Cook by a quitclaim deed, but this defendant, on information and belief, denies that said conveyance was made at

100 the instance of said John P. Cook, or that it was without any consideration paid to said Dessaint, but on the contrary avers that said Ebenezer Cook paid to said Dessaint for said farm a full and adequate consideration, being (as this defendant is informed & believes) $250 00 in addition to the sum which said Dessaint had himself paid therefor. And this defendant positively denies that he at any time had any notice or knowledge that such conveyance was made at the instance of John P. Cook, or was without consideration therefor.

This defendant admits that in December, 1859, said Cook & Sargent failed in business, and that about the time of their said failure said Ebenezer Cook conveyed said farm to this defendant, as alleged in said bill, but this defendant denies that the consideration for said conveyance was such as is alleged in said bill, to wit, any indebtedness from

said Cook & Sargent to this defendant, or liabilities assumed by this defendant for said Cook & Sargent on account of which this defendant has suffered no loss or damage; on the contrary, this defendant avers that the consideration for said conveyance was the assumption, by this defendant, of payment of two prommissory notes for five thousand dollars each, made by said Ebenezer Cook, and endorsed by this defendant for said Cook's accommodation, which said notes had been previously made & negociated, and were at the time of such conveyance to this defendant outstanding; which notes this defendant shortly afterwards, in fulfillment of his said agreement to assume the same, took up and gave instead thereof his own individual notes, the said Cook not being a party to nor in any way liable upon the same.

And this defendant positively denies that before or at the time when such conveyance was made to him, or he agreed to accept the same, or at any other time whatever, he had any notice or knowledge whatever of the pretended fraudulent practices alleged and pretended in said bill to have led to & brought about the sale of said farm under said trust deed, or of any or either of said alleged fraudulent practices.

This defendant admits that he filed his petition in the district court of Scott County against said May as alleged in said bill, but positively denies that he did the same at the instance of said John P. Cook, or that said Cook knew anything about the same, or was consulted or had anything whatever to do with the commencing or carrying on said suit.

101 This defendant is informed and believes that said May took, or partially took, the deposition of said Powers in said suit, but whether in due form of law or not this defendant is ignorant.

This defendant, on information and belief, avers that said deposition was never completed, but that the further taking thereof was adjourned to a future time to give this defendant's counsel an opportunity to cross-examine said Powers, but that in the mean time said Powers suddenly died. As this defendant has never read or seen said deposition, and as he finds it is not now on file in the clerk's office of said district court, where the papers in said case ought regularly to be, he has no knowledge or information whether the alleged copy thereof in plaintiff's bill is a copy thereof in fact or not.

This defendant admits that said suit was afterwards dismissed, but denies that the same was done at the next term of said district court after the death of said Powers, and avers that said dismissal was with the consent and by the procurement of said May, or his attorneys in said suit.

This defendant denies that said May has since said sale under said trust deed been willing or anxious to pay the amount due on said mortgage & trust deed, or either of them; and, on information & belief, he denies that said May has at any time since said sale been able or is now able to pay said amounts.

This defendant admits that he claims to be the owner of said farm, and avers that he is such owner, & that said May has no interest, either legal or equitable, therein.

And this defendant says that notwithstanding he is willing & hereby offers, on payment to him by said May of the sum of eight thousand dollars, to release and quitclaim the said farm to said May; said sum being much less than the amount due upon said mortgage & deed of trust at the time of said sale, this defendant believing that $8,000 00 is the full amount of the present value of said farm.

This defendant admits that said John P. Cook brought suit on said mortgage note against said May in the circuit court of the United States

for the northern district of Illinois; and further avers that said Cook recovered judgement in said suit against said May for the amount of said note, and that said judgement was assigned to this defendant at the same time when the said farm was conveyed to him by said Ebenezer Cook, and for the same consideration, and is now owned & held by him. And he denies that said May was discharged from liability on said note by the terms of the sale under said trust deed, or in any other way.

102 This defendant has no knowledge or information by what particular motives (if any) said May was influenced in causing the said trust deed to be framed in the way in which it was framed; and is advised and believes that it is of no consequence what said motives (if any) were; and that said deed does not, by its fair construction, render it imperative upon the trustee to sell the land in parcels, but leaves it to his discretion; and this defendant avers, upon information & belief, that the said land would not have brought any larger price (if as large) than it did bring if the same had been sold in parcels, and that no abuse of his said discretion was committed by said trustee in selling said land.

And he avers positively that if said trustee acted with any disregard, wilfull or otherwise, of the interest of said May, in his manner of making sale under said deed, or was guilty of any breach of trust, this defendant at no time had any notice or knowledge whatever thereof.

And this defendant claims and insists that he is a bona-fide purchaser of said farm for full value, and without notice of any frauds practiced on said May, or of any equities which he may have in relation thereto.

And this defendant, having fully answered the said bill, so far as he is advised that he is bound to answer the same, prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

(Signed) GEO. L. DAVENPORT.

(Signed) JNO. N. ROGERS,
Sol. for Def't Davenport.

UNITED STATES OF AMERICA,
State of Iowa, County of Scott, ss:

I, George L. Davenport, being duly sworn, do say that I am one of the defendants in the foregoing entitled suit; that I am acquainted with the contents of the foregoing answer; and that the said answer is true of my own knowledge, except as to the matters therein stated on information & belief, & as to those matters I believe it to be true.

(Signed) GEO. L. DAVENPORT.

Subscribed & sworn to by the said Geo. L. Davenport this 27th day of Nov., 1861.

(Signed) L. E. BROWN,
U. S. Commissioner, District of Iowa.

103 (Indorsed:) Copy. U. S. district court, district of Iowa, southern division. James May vs. Antoine Le Claire et als. In equity. Answer of def't Geo. L. Davenport.

Filed Nov. 29th, 1861.
(Signed) J.C. BURNS, *Clerk*,
By EDW'D MUMM, *Dep'y.*

Filed Nov. 13th, '62.
W. G. WOODWARD.

Jno. L. Rogers, sol. for def't.

104 *Copy.*

District court of the United States for district of Iowa, southern division.

JAMES MAY
vs.
ANTOINE LE CLAIRE ET ALS. } In equity.

The answer of Ebenezer Cook, one of the defendants, to the bill of complaint of James May, complainant.

This defendant, saving and reserving to himself all and all manner of exceptions to the said bill for the manifold insufficiencies thereof, for answer to so much thereof as he is advised that he is bound to answer, saith:

That he is informed and believes that about the time alleged in said bill, the said May and Le Claire made an agreement or contract of some kind or character with each other; but what were the particular terms thereof, and whether they were such as alleged in said bill, and whether the alleged copy thereof set forth in said bill is in fact a true copy, this defendant has not knowledge or information, and can neither admit nor deny the allegations of said bill in reference thereto.

And whether the said Le Claire was at the time of the [of the] making of such agreement largely or at all indebted to said May, this defendant has not knowledge or information, and can neither admit nor deny the same. This defendant admits that said "Rose Bank farm" is correctly described in said bill, and believes the same was worth in March, 1859, about $12,000 00, but on information and belief he denies that [that] the same is now worth that sum, or more than about the sum of $7,000 00. This defendant admits it to be true that the said Kettell mortgage & deed of trust to Charles Powers existed as incumbrances on said farm, as alleged in said bill.

105 This defendant positively denies that said Le Claire, from the time of making of said agreement with said May to the time of commencing this suit, held, possessed, or enjoyed said farm as of his own right or property, or at all; on the contrary thereof, this defendant alleges the fact to be that when this defendant purchased the said farm from L. C. Dessaint, the same was in the actual occupation of certain tenants, who, with the consent of the said Dessaint, became the tenants of this defendant, and continued in the occupation of the same until this defendant sold and transferred the said premises to the said George L. Davenport; and defendant denies that said Le Claire has had any possession or enjoyment whatever of said premises, or of any rents or profits thereof, subsequent to the time when the same was conveyed to this defendant by the said Dessaint; and as to any prior occupation or enjoyment thereof by said Le Claire, this defendant has no knowledge or information.

As to whether said May shortly after his said agreement with Le Claire commenced making arrangements to have the incumbrances removed from said farm; and as to whether he had an interview with said Charles Powers; and whether said Powers gave said May to understand and believe he would lend his influence and assistance to said May in said May's efforts to raise money to remove the incumbrances from said farm; and whether he assured said May that in the mean time he would not enforce a sale on said trust deed, this defendant is wholly ignorant, having no knowledge or information whatever in respect thereto.

This defendant, upon information and belief, denies that said May had any real estate whatever in the county of Scott, except what was incumbered for more than its value by mortgages, judgments, &c., or that he had any large or valuable landed possessions in Illinois, Pennsylvania, & other States, or any credit or sums of money due him to any considerable amount which were good or collectable.

And this defendant avers his belief to be that the said May was, at the time in question, and is now, wholly insolvent and pecuiniarly
106 worthless; this defendant, upon information and belief, denies that said May made an engagement with a party in Pittsburgh, or elsewhere, to furnish him the amount necessary to pay off said mortgage and trust-deed incumbrances, or any engagement which would, in July, 1859, have secured the payment of said incumbrances but for the interferance of said Le Claire or of any of the defendants herein or of this defendant.

He positively denies that he (the defendant) was guilty of any interference whatever in this matter, &, on information and belief, he denies that any of the defendants herein were guilty of any such interference. And this defendant positively denies that he ever "formed the inequitable and erroneous opinion" alleged in said bill to have been formed by said Le Claire and the other defendants herein, or any other "inequitable and erroneous opinion" in reference to the matter. And this defendant positively denies that he ever conspired, combined, confederated, or agreed with the said Le Claire, or the other defendants herein, or any or either of them, or any other person or persons whomsoever, for the purpose of procuring said farm to be sold under said deed of trust, or of inducing said Powers to take any steps to enforce a sale under said deed of trust, or of procuring said farm to be sold to said Dessaint or John P. Cook, or to any confederate or freind of said Le Claire, or to do any act to hinder or prevent said May from carrying out his said agreement with said Le Claire, or to do any act whatever to the injury or prejudice of said May in respects to the matters of his said bill. And, upon information and belief, he denies that any such conspiracy, combination, confederation, or agreement for any or either of the said purposes was ever formed or had by or between any of the said defendants herein, or by any or either of them, with any other persons or person.

And this defendant positively denies that if any such conspiracy, confederation, or agreement was ever formed or had, he, at any time whatever, had any notice or knowledge whatever thereof; and he especially denies that he had any such notice or knowledge at the time of his purchasing and taking a conveyance of said farm from L. C. Dessaint, as hereinafter set forth.

And this defendant positively denies that he himself, and, upon information & belief, denies that any or either of the defendants herein
107 did any act whatever for the purposes aforesaid, or either of them; and if any such act was done, he denies all notice or knowledge thereof at any time.

This defendant, upon information and belief, denies that said John P. Cook called upon said Powers, and by his persuasion and influence and the influence of said Le Claire, or of any of the defendants herein, induced said Powers to advertise for the enforcement of said trust deed.

And he positively denies that the same was done by his advice or consent, or that he at any time, and especially when he purchased & took a conveyance of said farm from L. C. Dessaint, as aforesaid, had any notice or knowledge whatever thereof.

As to whether said May met said Powers in Pittsburgh, and what, if any, conversation then passed between them, and whether said Powers

then gave said May any assurance that no foreclosure or sale should be made of said farm, this defendant has no knowledge or information whatever. He positively denies that if any such communication occurred between them as is alleged in said bill, or any such assurance was given by said Powers to said May, he (this defendant) at any time, and especially at the time of [of] his purchase and taking a conveyance of said farm as aforesaid, had any notice or knowledge whatever thereof.

This defendant, upon information and belief, denies that after said Powers had returned to Davenport from Pittsburgh, or at any time, said John P. Cook called upon him and requested and urged him not to have or influence any bidders to come to the sale of said farm to be made under said trust deed.

And this defendant denies all knowledge or information of any such conversation or communication between said John P. Cook & said Powers in referrence to the sale of said farm as is alleged in said bill, or of any such agreement in relation to the purchase of said farm by said Cook or Dessaint, as is alleged in said bill, or of any conversation or communication or agreement between them in reference to such sale. And this defendant positively denies that if any such conversation, communication, or agreement took place, the same was with his knowledge,
108 by his advice, procurement, or privity. And he positively denies that he ever, and especially at the time of the purchase and conveyance of said farm to him as aforesaid, had any knowledge or notice whatever thereof.

This defendant, upon information and belief, denies that said May went to Davenport previous to the sale of said farm under said deed of trust, with means to pay the amount due on both said trust-deed and mortgage incumbrances, or either of them.

He avers, on information and belief, that said May had actually under his control or in his possession no means or funds whatever; that he had made a conditional bargain with his "friend" from Pittsburgh, to loan him the sum of $6,000 00 and no more, and that said May was by the terms of said bargain to give the said friend as security for said loan two notes of A. H. Davenport for $7,000 00 each, which he was to get from said Le Claire, and that the said bargain for said loan utterly failed and fell through because said May was unable to furnish the said agreed security.

And this defendant positively denies that if said May in fact had the means to pay off said incumbrances, or either of them, or went to Davenport for the purpose of paying them, or either of them, off, he at any time had any notice or knowledge whatever thereof.

Whether said May on the day designated for the sale of said farm under said trust deed, and near the hour designated for such sale, called upon said Powers, this defendant has no knowledge or information whatever.

He denies, upon information and belief, that if said May did so call on said Powers, it was with any bona-fide intention of paying said trust-deed and mortgage incumbrances, or either of them, inasmuch as this defendants believe that said May had no means whatever of making such payment.

And whether or not, at such call, any such conversation occurred between said May and said Powers, as is alleged in said bill, and whether or not, while they were conversing, a note or writing was handed to said
Powers, and whether or not said Powers said he was called out on
109 other business, and that said May would have to excuse his absence, or words to that effect, and whether or not said Powers

left said May for the purpose of selling said farm without the said May's knowing of his said purpose, this defendant has no knowledge or information whatever, and whether said note or writing so handed to said Powers (if any) was written or sent by said John P. Cook, this defendant has no knowledge or information whatever.

This defendant, upon information and belief, denies that said note or writing (if any) was written or sent by said John P. Cook for the purpose of inducing said Powers clandestinely to withdraw himself from the company of said May, and sell said farm to said Cook or Dessaint, or to any one, without the knowledge of said May, and, upon information and belief, he denies that said Cook exercised any influence or inducement whatever over said Powers to induce him so to withdraw himself from said May or so to sell said farm.

And this defendant positively denies that the same was done by his advice, consent, or procurement, or with his privity, or that at any time, and especially at the time of his purchasing and taking a conveyance of said farm, as aforesaid, he had any notice or knowledge whatever of any or either of such acts. And if, in fact, the said Powers did withdraw himself from said May's company for the purpose of selling said farm without said May's knowledge, or did in fact sell said farm without May's knowledge, (as to which this defendant has no knowledge or information,) this defendant positively denies that he ever had any notice or knowledge whatever thereof.

Whether said Powers proceeded to the office of said Cook, and whether said Cook had a horse and buggy prepared to conduct himself & said Powers to the court-house, this defendant has no knowledge or information, nor whether they got into said buggy and drove to the court house, as alleged in said bill.

This defendant further saith that he was not present at the sale of said land under said trust deed, and has no information or knowledge as to what took place at said sale, except that he is informed and believes that the said farm was then and there sold in pursuance of said
110 advertisement in said bill mentioned, by said Powers to said Louis C. Dessaint, but at what price it was struck off to said Dessaint this defendant is ignorant.

This defendant, on information and belief, denies that any plan whatever had been arranged or was conducted either stealthily, fraudulently, or otherwise, by the agents or attorneys of said Le Claire, or by his co-operation or confederacy, or that of any of the defendants herein, to effect a sale of said farm and secure the purchase of it to any confederate or attorney of said Le Claire, and he positively denies that any such plan was arranged or conducted by him, or by his co-operation or confederacy, with any person or persons whomsoever; and he positively denies that he at any time whatever had any notice or knowledge of any such plan.

This defendant has no knowledge or information whether said John P. Cook prepared the deed executed by the said Powers to said Dessaint conveying said farm. He believes and avers it to be true that such deed was in fact executed by said Powers and delivered to said Dessaint, whether on the day of the sale or a subsequent day this defendant is ignorant.

This defendant has no knowedge or information whether said John P. Cook called on said Powers and paid him the amount of the bill of said Dessaint on said sale, nor in what manner such payment was made; on information and belief he avers that the payment, whether personally made by said Cook or Dessaint, was made with said Dessaint's funds, and on his account.

This defendant admits that shortly after said sale of said farm, & after this defendant had purchased the same of the said Dessaint, said Kettell mortgage was assigned to said John P. Cook, and defendant avers the truth to be that the said John P. Cook paid a full and adequate consideration therefor, to wit, the amount of said note and the accrued interest.

This defendant has no knowledge that said May caused to be recorded the notice marked Exhibit "I," attached to said bill, and cannot admit or deny the same, but he positively denies that he had any notice or knowledge until after he had purchased said farm and taken his
111 deed therefor from said Louis C. Dessaint, and he is advised and believes that said instrument and the recording thereof had no force or effect to impart notice thereof to this defendant or any other person.

This defendant, on information and belief, denies that said Dessaint did not, in fact, pay anything on account of his purchase of said farm, or that his name was used by said John P. Cook, as attorney or agent for said Le Claire, as an instrument through whom said pretended title and purchase under said trust-deed sale could be, as it were under cloak and cover, transferred to the order of said Le Claire, or his said attorney, or defendants in this suit; on the contrary, this defendant avers, on information and belief, that said Dessaint actually and in good faith paid out of his own proper funds the whole amount due on said trust deed, ammounting to over $7,000 00, for said farm, and that he purchased the same in good faith for his own use and benefit, without any intention of transferring the said farm to said Le Claire, or any other defendant herein, and that neither said Le Claire nor any other of said defendants had any interest in or concern with said purchase.

And he positively denies that he at any time whatever had any notice or knowledge that the said Dessaint paid nothing for said farm or of any such use of his (Dessaint's) name for the purpose of transferring the title of said land to the order or control of said Le Claire, or any other defendant herein, or of any interest or concern which said Le Claire or any other defendant herein, (save and excepting said Dessaint,) had in said purchase of said farm.

This defendant admits it to be true that said Dessaint conveyed said Rose Bank farm to this defendant by a quitclaim deed; but this defendant most positively denies that said conveyance was made at the instance of said John P. Cook, or that it was without any consideration paid to said Dessaint, but, on the contrary thereof, this defendant avers that he paid to said L. C. Dessaint for said farm a full and adequate consideration therefor, to wit, the sum of $7,440 00, together with the further sum of $250, making in all the sum of $7,690, which this defendant avers he paid said L. C. Dessaint of his (the said defendant's) own proper funds.

112 This defendant admits that in December, 1859, said Cook & Sargent failed in business, and that about the time of their said failure this defendant conveyed said farm to the said Geo. L. Davenport, but this defendant denies that the consideration for said conveyance was such as is alleged in said bill of complaint, to wit, that any indebtedness from said Cook & Sargent to said Geo. L. Davenport, or liabilities assumed by said Geo. L. Davenport for Cook & Sargent, or on account of which said Davenport has suffered no loss or damage; on the contrary thereof, this defendant avers that the consideration for said conveyance was the assumption by said George L. Davenport of the payment of 2 promissory notes for $5,000 each, made by said Ebenezer Cook and

endorsed by said Davenport for said Cook's accommodation, which said notes had been previously made and negociated, and were at the time of such conveyance to said Davenport outstanding and unpaid, and which notes the said George L. Davenport shortly afterwards, in fulfillment of his said agreement to assume the same, took up, and gave instead thereof his own individual notes, this defendant not being a party to, nor in any way liable upon, the same.

This defendant denies all combination, confederation, and fraud, or knowledge of any such, on the part of any of the said defendants, or any notice of the same.

This defendant has no knowledge or information about any bill or petition in the district court of Scott County against said May, filed by the said George L. Davenport, nor hath this defendant any knowledge or information about the deposition of the said Charles Powers, nor of the dismissal by the said George L. Davenport of his suit or petition against the said James May.

This defendant denies that said James May has since said sale under said trust deed been willing or anxious to pay the amounts due on said mortgage or trust deed, or either of them.

And, on information and belief, defendant denies that said May has at any time since said sale been able, or is now able, to pay said amounts.

This defendant admits that said John P. Cook brought suit on said mortgage note against said May, in the federal court of the United States for the northern district of Illinois, and recovered judgement thereon, and that said judgement was assigned to George L. Davenport, at the same time this defendant conveyed said farm to the said Davenport and for the same consideration.

113 This defendant denies that there was any unfairness or illegality in the said sale by the said Charles Powers, trustee as aforesaid, and avers that no abuse of said trustee's discretion was committed in selling said land, nor had this defendant any notice or knowledge whatever that any such was committed.

This defendant claims and insists that he was a purchaser bona fide of said farm for full value and without notice of any fraud practiced on said May, or of any equities which he may have in relation thereto.

And this defendant, having fully answered the said bill *so* [as] far as he is advised that he is bound to answer the same, prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

(Signed) EBENEZER COOK.

JOHN N. ROGERS, *Sol'r for Def't E. Cook.*

UNITED STATES OF AMERICA,
State of Iowa, County of Scott, ss:

I, Ebenezer Cook, being duly sworn, do say that I am one of the defendants in the forgoing entitled suit; that I am acquainted with the contents of the foregoing answer; and that the said answer is true of my own knowledge, except as to the matters therein stated on information & belief, and as to those matters I believe it to be true.

(Signed) EBENEZER COOK.

Subscribed and sworn to by the said Ebenezer Cook before me this 27th day of Nov., 1861.

[SEAL OF U. S. COM.] (Signed) S. E. BROWN,
U. S. Commissioner Dist. of Iowa.

114 (Indorsed:) Copy. U. S. district court of Iowa. James May vs. Antoine Le Claire et als. Answer of Ebenezer Cook. In equity.

Filed Nov. 29th, 1861.
(Signed) J. C. BURNS, *Clerk*,
By EDWARD MUMM, *D'p'y.*

Filed Nov. 13th, '62.
WOODWARD, *Clerk.*

John N. Rogers, sol. for def'ts.

115 In the district court of the United States for the district of Iowa, southern division.

JAMES MAY
vs.
ANTOINE LE CLAIRE & OTHERS. } In equity.

The answer of Louis C. Dessaint, one of the defendants, to the bill of complaint of James May, complainant.

This defendant, saving, & reserving to all and all manner of exceptions to the said bill for the manifold insufficiences thereof, for answer to so much thereof as he is advised that he is bound to answer, saith:

That he is [is] informed & believes that an agreement of a nature similar to that alleged in said bill was made between said May & said Le Claire, but whether the instrument set forth in said bill and alleged to be a copy of said agreement is a true copy thereof or not, this defendant is ignorant, and for greater certainty craves leave to refer to the original instrument, when the same shall be produced.

This defendant admits the existence of the said trust-deed & mortgage incumbrances upon said Rose Bank farm, as alleged in said bill, and that the description of said farm is correctly stated in said bill.

This defendant further saith that whether said May at any time had an interview with said Charles Powers; and whether said Powers gave said May to understand and believe that he (Powers) would lend his influence and assistance so far as he could to said May in his (May's) efforts to raise money to remove the incumbrances from said farm, and assured said May that in the mean time he would not enforce a sale on said trust deed, this defendant has no knowledge or information, and can neither admit nor deny the same; and he positively denies that if the same took place he had any notice or knowledge thereof whatever at the time of the purchase by him of said farm at the sale thereof, under said trust deed, or at the time of the delivery of the deed from said Powers to him & the payment of the purchase-money.

Whether or not said May found a party who was willing to
116 advance the money necessary to pay off the said trust-deed and mortgage incumbrances, and made an arrangement with him to do so or not, this defendant has no personal knowledge, but, upon information & belief, he denies the same to be true.

And this defendant denies positively that said May was prevented from paying off said incumbrances by any interferrence or conduct of this defendant, whether inequitable and fraudulent or otherwise.

And this defendant positively denies that he ever conspired, confederated, or combined with said Le Claire, or any of the other defendants herein, or with any other person or persons whomsoever, for the pur-

poses of preventing said May from paying off said incumbrances on said farm, or for the purpose of procuring said farm to be sold under said trust deed, or for doing or procuring to be done any other act or thing whatever in referrence to said farm to the prejudice of said May, and this defendant positively denies that he ever had any knowledge or notice whatever of any such conspiracy, confederation, or agreement for the purposes aforesaid, or any or either of them, on the part of said Le Claire, or any of the other defendants herein, or either of them, or of any such purpose or intention on the part of any or either of the defendants herein.

And this defendant, upon information & belief, denies that any such conspiracy, confederation, or agreement on the part of said Le Claire in any, or [any or] either of the defendants herein, ever existed or took place.

This defendant further denies that he formed the "inequitable & erroneous opinion" alleged in said bill to have been formed by said Le Claire and the other defendants herein.

This defendant further saith that whether said John P. Cook called upon said Powers, and by his persuasion and influence induced him (Powers) to advertise for the enforcement of said trust deed, this defendant has no personal knowledge, but, on information and belief, he denies the same to be true; and he positively denies that said Cook did the same, acting in confederacy with this defendant, or by means of the persuasion or influence of this defendant, or that this defendant ever confederated with said Cook for the said purpose, or with any other person, or used any persuasion or influence, or did any act whatever to bring about an advertisement or any other steps by said Powers to enforce said trust deed.

117 And this defendant positively denies that he ever had any notice or knowledge of the doing of the said acts by the said Cook, or by any of the defendants herein, or of any confederacy or agreement between any of said defendants herein, or any purpose or design on the part of either or any of said defendants to do or procure to be done said acts.

And he especially denies that he had any such notice or knowledge at the time of the purchase by him of said farm at the sale under said trust deed, or of the payment of the purchase-money & receipt of the deed by him on said sale.

This defendant further saith that whether or not, at or about the time when said advertisement bears date, said May met said Powers in Pittsburgh, and whether or not all or any of the conversation alleged in said bill occurred between them, this defendant has no [no] knowledge or information whatever; he denies that he had any knowledge or notice of such interview or conversation at the time of the purchase by him of said farm as before stated.

This defendant, upon information and belief, denies that said John P. Cook called upon said Powers after he had returned to Davenport from Pittsburgh, & requested and urged him not to have or influence any bidders to come to the sale of said farm under said trust deed, and he positively denies that the same was done by his procurement or with his knowledge, or that he ever, & especially at the time of the purchase by him of said farm, & payment therefor & receipt of the deed as aforesaid, had any notice or knowledge whatever of said act.

This defendant admits & avers the truth to be that he, learning that said farm was advertised for sale by said Powers under said trust deed, & being desirous to purchase the same for his own use and benifit, re-

quested said John P. Cook, as his attorney, to call on said Powers & enquire whether said farm could be purchased for the amount due on said deed of trust; that said Cook subsequently informed him that he was informed by said Powers that said farm would be sold subject to said prior Kettell mortgage; this defendant thereupon authorized said Cook to agree with said Powers, that in case he (this defendant) became the purchaser at said trust-deed sale, he would purchase the said mortgage and pay therefor the amount thereof at or before the time when it became due, if said Powers would procure the same to be transferred & assigned to this defendant, and that he would also, in case the
118 property should be struck off to him at said sale at a price below the amount due on said trust deed, pay the balance remaining due thereon, the said note so secured by said deed of trust being transferred to him; that he is informed & believes that this is the only agreement said Cook did make with the said Powers, and he positively denies that he authorized or had any notice or knowledge of any other.

This defendant denies that in authorizing said agreement he was actuated by any wish or intention whatever to effect a sale of said farm to himself, or any other person, in order to prevent said May from carrying out his said agreement with said Le Claire; on the contrary, he avers the fact to be that at that time and at the time of the sale of said farm to this defendant, he was unacquainted with the particulars of said agreement between May & Le Claire, and did not even know that said agreement related to or had anything to do with said farm; that his bona fide intention was at all times to buy the said farm (if at all) for his own use & benifit, and that he did so in fact purchase the same as hereinafter more particularly stated.

This defendant, upon information and belief, denies that said May went to Davenport on the day previous to the sale of said farm with means to pay the amount due on said mortgage and trust-deed incumbrances, or that his object in going there was to pay and discharge said incumbrances.

This defendant, upon information & belief, avers that said May had no means whatever of paying off said incumbrances; that he had made an arrangement or bargain for a loan of $6,000 00, and no more, which bargain was never carried out, because said May was unable to furnish the security which he had agreed to give for said loan. And this defendant positively denies all notice or knowledge of any ability or intention on the part of said May to pay off said incumbrances at the time of the purchase by him, and payment of the purchase-money and receipt of the deed for said farm as aforesaid.

This defendant has no knowledge or information whether said May called on said Powers on the day & near the hour designated by said advertisement for the said sale of said farm, nor whether all or any of the conversation alleged in said bill then passed between said May & Powers, nor whether a note or writting was handed to said Powers, nor whether said Powers then withdrew himself from the company
119 of said May, nor whether, if he so withdrew himself, it was for the purpose of selling said farm. This defendant, upon information and belief, denies that said Powers so withdrew himself under the corrupt & wicked influence of said Cook for the purpose of selling said farm without the knowledge of said May to this defendant, or any other person.

And, upon information & belief, he denies that said Cook wrote or sent a note to said Powers for the purpose of inducing him so to withdraw himself, & so secretly & without the knowledge of said May to

sell said farm; and he positively denies that the same was done by his advice or procurement, or with his knowledge or consent, and further positively denies that he had any notice or knowledge thereof whatever when he purchased & paid for said farm and received the deed therefor as aforesaid, or that he had any notice or knowledge of said Powers having in fact so secretly withdrew himself from the company of said May for the purpose of selling said farm without his (May's) knowledge, or of the practicing of any fraud or deceit whatever in referrence to said sale upon said May.

This defendant admits and avers that said farm was, on the day specified in said advertisement, and at the hour and place therein mentioned, to wit, on the 20th day of July, A. D. 1859, at two o'clock p. m., at the court-house door in said city of Davenport, offered for sale by said Powers under said trust deed, upon the terms of sale in said bill alleged that this defendant attended said sale and bid the sum of $5,000 00; and that the said farm was struck off to him by said Powers for said sum, that being the highest sum bidden.

This defendant positively denies that any plan whatever had been arranged & conducted by him or with his knowledge, either stealthily, fraudulently, or otherwise, to effect a sale of said property & secure its purchase by some one of the confederates or attorneys of said Le Claire, and he positively denies that no persons were there to bid on said property, or did bid on the same, except this defendant & John P. Cook; on the contrary, he avers that several other persons were present and did bid on said property, among the rest G. C. R. Mitchell, & he believes also R. D. Congdon.

120 This defendant does not know whether said John P. Cook prepared the deed executed to this defendant by said Powers for said farm, but believes it was prepared under the supervision of said Cook, as this defendant had employed said Cook to act as his attorney, both in examining the title to the property & seeing that the deed was properly drawn and executed.

This defendant has no personal knowledge when said deed was delivered by said Powers to said Cook, but he denies that the same was delivered to him (this defendant) on the said 20th of July, or until the 21st of July, 1859, & he believes it was not delivered at all until the said last-mentioned day, be[be]cause the said Powers came to this defendant on the morning of that day and said that May desired to pay the debt in whole or in part, and asked this defendant to waive his claim to the deed in case he (Powers) should effect any such arrangement with May, and it was not til after this that the deed was delivered to this defendant, said May having (as he is informed & believes) failed to make any satisfactory arrangement with said Powers, or to pay him anything in said debt.

This defendant positively denies the allegation of the said bill that he did not in fact pay anything on account of said purchase; on the contrary, he avers that he in fact paid on account thereof the sum of seven thousand four hundred and forty dollars, ($7,440 00,) and that he paid the same out of his own proper funds, no part thereof having been furnished or advanced by said Le Claire, or any other defendant herein, or any other person whatever.

This defendant has no personal knowledge of the particular mode in which the payment was made to said Powers by said John P. Cook, not having been himself present, but he avers that he gave said Cook on the said 21st day of July his (this defendant's) check for the said sum of $7,440 00 on the Merchants' Branch of the State Bank of Iowa at said

Davenport, where this defendant keeps his account, and had the said sum on deposit for the purpose of making said payment, which check was duly paid by said bank as this defendant knows, from the fact that it was charged to him by said bank on the same day in his account therewith, and was afterwards returned by said bank, with his other checks, to him, and is now in his possession.

121 And this defendant positively denies that his name was used by said John P. Cook as attorney for said Le Claire, as an instrument through whom the said pretended title and purchase under said trust-deed sale could be as it were under cloak & cover transferred to the order of said Le Claire & his said attorney and confederate defendants in this suit.

He avers that he bought the said property at said sale in good faith for his own use and benifit, with, & the intent to hold it for his own use and benifit; that the said Le Claire had no interest whatever in the purchase or in the title thereby acquired, and that this defendant in making the purchase had no object in view with which the said Le Claire was in any way concerned or whereby he was affected.

This defendant further avers that after the said purchase by him he assumed the control and management of said farm, and retained the same until he sold the said property to Ebenezer Cook, and he positively denies that said Le Claire continued in possession thereof after said purchase by this defendant, or had after that time any interest whatever therein. This defendant admits that the said May caused the said notice, a copy of which, marked Exhibit "I," is attached to said bill, to be recorded in the recorder's office of Scott County, but he is advised and believes that the same was without authority of law, and had no legal effect on the rights of any person.

This defendant admits that he did convey said farm to Ebenezer Cook by a quitclaim deed at or about the time alleged in said bill, but he positively denies that he did so at the suggestion or instance of said John P. Cook or said Le Claire, or anybody else, and he positively denies that the said conveyance was without consideration, but avers, on the contrary, that the said Ebenezer Cook paid him therefor the sum of $250 00 in addition to the sum which this defendant had himself paid for said farm as hereinbefore stated, making about the sum of $7,700 00. And this defendant positively denies that said conveyance was made in pursuance of any previous understanding, plan, or device whatever, but avers that he was induced to make it by finding that the house on said farm, on examination, owing to its particular construction, could

122 not be raised and enlarged as he had intended, so as to suit the defendant without much greater expense than he had anticipated, and that he further found that there were two or three hundred dollars of unpaid taxes due on said farm; that the said Ebenezer Cook offered him therefor two hundred and fifty dollars over and above the price he had paid for it, and this defendant, learning at the same time of the filing of said notice by said May, and thinking it probable therefrom, and from the well-known litigious character of said May, that he should be troubled with a law-suit about the farm if he kept the same, was induced to accept said Cook's said offer, and conveyed the farm to him as aforesaid, the said Cook actually and in good faith paying him the sum of seven thousand seven hundred dollars, or thereabouts, therefor.

Whether or not said Geo. L. Davenport filed his petition against said May in the Scott County district court as alleged in said bill; and whether or not the proceedings alleged were had in said suit; & whether or not said May took the deposition of Charles Powers therein in due form of

law, this defendant has no positive knowledge nor information, but he is advised & believes that said deposition, if in fact so taken, cannot be used or read in evidence in this suit, nor against this defendant, having been taken (if at all) in another proceeding to which this defendant was not a party. He admits that said Powers is now deceased.

And this defendant further saith that he is advised & believes that whatever may have been the particular motives (if any) by which said May was influenced in framing the said trust deed, the terms of said deed do not by their just and fair construction make it imperative upon the trustee in making sale thereunder to sell the land in parcels, but that the same is left discretionary with said trustee, and no abuse of said discretion is shown or alleged in said bill.

And if in fact the said Powers was actuated by any fraudulent or improper motives in his mode of selling said farm under said trust deed, or if he acted with any disregard, wilful or otherwise, of the interest of said May in his mode of making said sale, this defendant posi-
123 tively denies that he, at the time of his said purchase, or at any other time, had any knowledge or notice whatever thereof.

And this defendant claims and insists that he was and is a bona-fide purchaser of said farm for full value, and without any notice or knowledge whatever any of the frauds alleged in the said bill, (if any existed, which, on information and belief, he denies,) or of any equities which said May may have against any other person or persons whomsoever in relation to said sale.

And this defendant, having fully answered said bill so far as he is advised that he is bound to answer, prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

(Signed) L. C. DESSAINT.

(Signed) JNO. N. ROGERS,
Sol'r for Def't Dessaint.

UNITED STATES OF AMERICA,
State of Iowa, Scott County, ss :

Louis C. Dessaint, being duly sworn, says that he is one of the defendants in the above-entitled suit; that he is acquainted with the contents of the foregoing answer; and that the same is true of his own knowledge, except as to the matters therein stated on information & belief, and as to those matters he believes it to be true.

(Signed) L. C. DESSAINT.

Subscribed and sworn to by the said Louis C. Dessaint before me this 11th day of November, A. D. 1861.

[SEAL.] (Signed) S. E. BROWN,
U. S. Comm'r Dist. of Iowa.

124 (Indorsed:) Copy. U. S. district court, district of Iowa, southern division. James May vs. Antoine Le Claire et als. Answer of Louis C. Dessaint, one of def'ts.

Filed Nov. 14th, 1861.

J. C. BURNS, *Clerk*,
By EDW. MUMM, *Dep'y.*

Filed Nov. 13th, 1862.

WOODWARD, *Clerk.*

Jno. N. Rogers, sol'r for def't.

125 *Copy.*

District court of the United States for district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUIRITE LE Claire, executors of the last will, &c., of Antoine Le Claire, dec'd, and others. } In equity.

The answer of George L. Davenport, executor of the last will and testament of Antoine Le Claire, dec'd, to the bill of revivor filed by James May, complainant, and also to the original bill and amendment thereto, filed by said .complainant and referred to in said bill of revivor.

This defendant, for answer to the said bill of revivor, saith that it is true that said Antoine Le Claire died, leaving a will as stated in said bill of revivor, and that said will has been probated, and this defendant and said Marguerite Le Claire have been appointed executors thereof, and have entered upon the discharge of their duties as such.

But whether said complainant has correctly set forth in said bill of revivor the names of the several parties interested under said will as devisees; saving and excepting the said Marguerite Le Claire, this defendant is ignorant and cannot admit nor deny the same.

And for answer to the said original bill of said complainant this defendant refers to his answer thereto heretofore filed by him in his own individual behalf, which he avers to be true, and prays that the same, so far as it extends, may be takend and stand as part of this his answer as executor as aforesaid.

And this defendant, further answering, saith that he is informed, and believes it to be true, that at the time of the making of the said pretended agreement of compromise between said May & said Le Claire in said original bill set forth, (if the same was in fact made,) the
126 said Le Claire was in no way indebted or liable to the said May, but, on the contrary, the said May was largely indebted to the said Le Claire, and that so far from its being true, as alleged in said bill, that said May was never able to induce said Le Claire to come to a settlement with him, except as alleged in said bill, that long before the said time an accounting and settlement was had between the said parties, upon which said May was found to be indebted to said Le Claire in a balance of at least $600 00, and thereupon for said balance executed and delivered to said Le Claire his promissory note, which note this defendant avers, on information and belief, to be still outstanding, unpaid, and to belong to the estate of said Le Claire, though he is not at this time able to find the same so as to state the contents thereof more particularly or annex a copy thereof hereto.

This defendant has no knowledge or information whether the particular descriptions of land set forth in said bill, and alleged therein to be descriptions of the property refered to in said alleged agreement between complainant and said Le Claire, as to be conveyed by said Le Claire to complainant, are or are not in fact descriptions of said property, and asks that complainant may be held to strict proof thereof. And this defendant, upon information and belief, absolutely denies it to be true that the said complainant was hindered or prevented from carrying out the said alleged agreement between him and said Le Claire by any interference or fraudulent conduct of the said Le Claire, or of any con-

federate or confederates of the said Le Claire, whether defendants to said bill or not, or of the said John P. Cook, or any other party acting as the attorney or agent of said Le Claire.

He denies that the said Le Claire ever confederated or combined with either of the defendants to the said bill, or with any persons or persons whatever, for the purpose of preventing said complainant from carrying into effect the said agreement with said Le Claire, or for the purpose of procuring the Rose Bank farm to be sold under said deed of trust to Charles Powers, and preventing the said complainant from paying off the encumbrances on the same, or for doing any act or acts whater to the prejudice or fraud of the complainant in reference thereto.

127 He denies that any or either of the acts alleged in said bill to have been done in pursuance of such pretended conspiracy and combination were done (if done at all, which defendant, upon information and belief, denies) with the knowledge, privity, or consent of the said Le Claire.

He denies that said John P. Cook, or any or either of the defendants, acted in the said pretended plan or conspiracy as the attorney or agent of said Le Claire, or was ever authorized or employed so to act.

He denies all and every of the allegations of said bill charging the said Le Claire with any confederacy, combination, or conspiracy whatever for the purposes, or either of them, aforesaid, or with doing any act or thing, or procuring or authorising the same to be done, in pursuance of any such plan or conspiracy or for the purpose of accomplishing the alleged end and object of said alleged conspiracy.

And this defendant further avers that at the date of the said alleged agreement between said complainant and said Le Claire, to wit, March 8, 1859, in addition to the encumbrances upon said farm set forth in said bill, to wit, the said Kettell mortgage & the deed of trust to Charles Powers, there were certain encumbrances thereon by virtue of certain judgements recorded against said complainant in the district court of Scott County as follows, to wit: One judgment against said complainant in favor of D. Whittemore & Son, rendered Oct. 15, 1857, for the sum of $\$2{,}464\frac{34}{100}$ [dollars,] damages, $6 35 costs.

Anoter judgement against said complainant in favor of Jeremiah Dunlevey, rendered Feb. 8, 1859, for $2,000 00 damages & $6 00 costs.

And this defendant further avers that since the date of said alleged agreement the following further judgements have been recovered against said complainant in the said Scott County district court, or transcripts thereof filed and docketed therein, so as to make the same liens on all the interest, if any, of the said complainant in any real estate in Scott County, to wit:

A judgement in favor of Drawson Wulsin, rendered in said Scott district court, November 19, 1859, for $1,907 00 damages & $5 00 costs.

Another judgement in favor of Mary Tumulty, Thos. S. Tumulty,

128 & Agnes Tumulty, minors, rendered in the district court of Lee County, May 19, 1859, for $375 00 damages and $14 85 costs, of which a transcript was duly filed and docketed in the office of the clerk of the district court of Scott County, July 23d, 1860.

Another judgement in favor of William Barnet, rendered in said Scott County court, August 7, 1861, for $25 00 damages & $14 25 costs.

Another judgement in favor of James M, Smith, rendered in said Scott district court, December 5, 1861, for $1,207 55 damages & $12 39 costs.

And this defendant further avers that all the said judgements are still in full force and unsatisfied and are liens upon all said complainant's interest in any real estate in Scott County, except the said judgement in

favor of D. Whittemore & Son, which this defendant is informed & believes was satisfied by a sale of real estate under execution issued thereon on or about September 29, 1860, and the said judgement in favor of Drawson Wulson, which, as this defendant is informed and believes, was in great part, but not entirely, satisfied, by sales of real estate under executions thereon June 20 & Sept. 29, 1860.

And this defendant further avers that, as he is informed and believes, James Thorington, sheriff of Scott County, did under an execution issued to him upon the said judgement in favor of Drawson Wulsin, & dated July 2, 1860, levy upon all the interest of said complainant in the said farm in said bill mentioned, and did, upon the 29th day of September, 1860, sell the same, under said execution, to said Drawson Wulsin at public auction, he being the highest bidder therefor; and that, said property having remained unredeemed from said sale for a year from said date thereof, the said sheriff did, on the 1st day of October, 1861, execute and deliver to said Wulsin a deed conveying to him, in pursuance of said sale, the said land so sold, which deed is on record in the recorder's office of Scott County, in book Z of deeds, page 545.

And this defendant says that he is advised that if the said May had any interest in the said land after and notwithstanding the said sale under said deed of trust to said Charles Powers, (which this defendant denies that he had,) that the same passed to and became vested
129 in said Drawson Wulson by virtue of said sheriff's sale and deed.

And for answer to the amendment filed to said original bill this defendant says that he believes it to be true that the said mortgage from Adrian H. Davenport was foreclosed by the said Le Claire by suit in the district court of Scott County, and that a decree of foreclosure was rendered thereon, & that the said property embraced in said mortgage was sold by the sheriff of Scott County under said decree and bought in by said Le Claire, and was conveyed to him in pursuance of such sale by the said sheriff; but as to the particular proceedings in said suit, and whether the exhibits attached to said amendment are true copies of said proceedings or any part thereof, this defendant has no knowledge or information, and prays that so far as the same are material the complainant may be held to strict proof thereof.

This defendant, upon information and belief, denies that said Le Claire ever "assigned" to said complainant either the said mortgage from A. H. Davenport or the notes secured thereby, if by said complainant's allegation of such "assignment" any actual or completed transfer thereof was meant to be averred. Whether or not a written instrument of assignment of said mortgage to complainant was ever subscribed by said Le Claire, or whether an endorsement was written by him upon said notes this defendant cannot say; but he denies that, if so, the same were ever delivered to said complainant, or intended by said Le Claire to be delivered to him, except upon complete fulfilment by complainant of the terms of his agreement with said Le Claire; which agreement said complainant wholly failed to comply with; and therefore never became entitled to an assignment of said mortgage and notes.

And this defendant positively denies that if such written instrument of assignment was cancelled by said Le Claire, or such endorsements of said notes erased by him, (as to which this defendant is ignorant and requires strict proof thereof,) the same was done either in derogation of the rights of complainant or for the purpose of defrauding him, inasmuch as this defendant is advised and believes that complainant had no rights whatsoever in or to the said mortgage or notes.

130 And as to any & all of the other matters and things alleged in said original or amended bill and not specifically answered either in this answer or in the answer heretofore filed by this defendant on his own behalf, this defendant has no knowledge or information, but prays that so far as the same are material, complainant may be held to strict proof thereof.

And this defendant, having fully answered, prays that he may be hence dismissed with his reasonable costs on this behalf most wrongfully sustained.

(Signed) GEORGE L. DAVENPORT,
Executor of Antoine Le Claire, Dec'd,
By JNO. N. ROGERS, *his Solicitor.*

UNITED STATES OF AMERICA,
State of Iowa, County of Scott, ss:

George L. Davenport, being duly sworn, says that the foregoing answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) GEORGE L. DAVENPORT.

Subscribed and sworn to by the said George L. Davenport before me this 28th day of May, A. D. 1862.

[SEAL.] (Signed) S. E. BROWN,
U. S. Comm'r Dist. of Iowa.

131 (Indorsed:) Copy. U. S. district court for dist. of Iowa, southern division. James May vs. George L. Davenport & Marguerite Le Claire, executors, &c., et als. Answer of George L. Davenport, executor, &c.

Filed May 30th, 1862.
(Signed) J. C. BURNS, *Clk,*
By EDW. MUMM, *Deputy.*

Filed Nov. 13, 1862.
WOODWARD, *Clerk.*

John N. Rogers, def't's sol'r.

132 *Copy.*

District court of the United States for the district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'C'R, & MARGUERITE Le Claire, ex'c'r'x, of the last will, &c., of Antoine Le Claire, dec'd, et al. } In equity.

The answer of Marguerite Le Claire, both in her own behalf and as executrix of the last will and testament of Antoine Le Claire, deceased, to the bill of revivor filed by James May, complainant, and also to the original bill of said complainant and the amendment thereto.

This defendant, for answer to the said bill of revivor, saith that it is true that said Antoine Le Claire died leaving a will, as set forth in said bill

of revivor, and that said will has been probated, and this defendant and said George L. Davenport have been appointed executors thereof, and have entered upon the discharge of their duties as such.

And for answer to the said original bill and amendment thereto, this defendant saith that as to all and each of the matters and things alleged in said bill and amendment she has no knowledge or information whatever, but is wholly ignorant thereof, saving & excepting that she was informed by her late husband, the said Antoine Le Claire, in his lifetime, that he was in no way indebted to the said May, and, upon said information, and her belief thereof, she denies the allegation in the said bill to be true that the said Antoine was largely or at all indebted to the said May.

And this defendant claims and insists that said complainant shall be held to strict proof of all or any of the allegations in his said original bill or amendment thereto, which are in any wise to affect the in-
133 terest of this defendant either in her own right or as executrix of her said deceased husband's estate.

And this defendant, having answered the complainant's bill to the best of her ability, prays to be hence dismissed with her reasonable costs in [in] this behalf most wrongfully sustained.

(Signed) MARGUERITE LE CLAIRE,
Executrix, & in her own behalf,
By JNO. N. ROGERS, *her Solicitor.*

UNITED STATES OF AMERICA,
State of Iowa, County of Scott, ss:

Marguerite Le Claire, being duly sworn, says that the foregoing answer is true of her own knowledge, except as to the matters therein stated on information and belief, and as to these matters she believes it to be true.

(Signed) MARGUERITE LE CLAIRE.

Subscribed and sworn to by the said Margurite Le Claire before me this 24th day of May, A. D. 1862. Witness my hand & notarial seal.

[SEAL.] (Signed) JNO. N. ROGERS,
Notary Public, Scott Co., Iowa.

(Indorsed:) U. S. district court for district of Ohio, southern division Copy. James May vs. George L. Davenport & Marguerite Le Claire, executors, &c., et als. In equity. Answer of Marguerite Le Claire, executrix, and in her own behalf.

Filed May 30th, 1862.
(Signed) J. C. BURNS, *Clk,*
By EDW. MUMM, *Deputy.*

Filed Nov. 13, '62.

WOODWARD, *Clerk.*

Jno. N. Rogers, sol. for d'f't.

134 THE STATE OF IOWA, *Scott County, ss:*

To James May, his agent and attornies:

Please to take notice that I am now ready to perform my part of a certain contract entered into with you on the 8th of March, 1859; which contract is in the words and figures following, to wit:

"I will agree to compromise all matters in controversy or dispute be-

tween Antoine le Claire, esq., and myself, if he will now agree to the following proposition:

"On my part, I will agree to cancel my claim to what may be due or claimable by me from Mr. A. Le Claire, of every kind, and will give him a clear deed for Rose Bank, with all the improvements on the 143 acres of land, I binding myself to pay, within twelve months, the incumbrance that is now on the Rose Bank farm.

"Said Antoine Le Claire, on his part, to give up and release all claims he has, of every kind, on me, and to give to me a good and sufficient deed and transfer of all his right, title, interest, and claim to all that part of his reserve at the head of the rapids, which he sold on contracted to sell to Captain A. H. Davenport, of Le Claire.

"He, A. Le Claire, putting me in law and in fact in his place and stead, as if he had made a clear deed to me when he made the contract to sell to said A. H. Davenport, said Le Claire transferring to me all kind of payments and securities that he had received from said A. H. Davenport.

"Said A. Le Claire also to give me a good deed for the land he owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland, near said island.

"It will be the understanding, if we make an amicable compromise, as I propose, that I am to give Mr. Le Claire no unnecessary trouble in any compromise or settlements that may be necessary to make with said A. H. Davenport, or others who have or may be purchasers of said land; but it is to be clearly understood that said A. Le Claire is to give me all the information, facility, and power he can to enable me to carry out, in good faith, all the conditions he has made up to this date with the said A. H. Davenport in the premises.

"I do not consider the acceptance of this compromise on the part of Mr. A. Le Claire as his awarding to me all that I have a just right to claim; but I feel persuaded that Mr. Le Claire is under the erroneous impression that my claims are much less in equity and good conscience than they really are.

"I will now prefer that we submit the matter as I proposed on the 26th ultimo.

"I have sanguine hopes that a fair, amicable adjustment would render me a more profitable award than I will get now by this proposition, and save me from a considerable amount of labor, care, and anxiety, that must devolve on me if my friend Le Claire accepts this.

(Signed) "JAMES MAY.

"DAVENPORT, *Feb'y* 4, 1859.

"I hereby agree to the foregoing proposition.

(Signed) "A. LE CLAIRE.

"DAVENPORT, *March 8th*, 1859.

"I hereby also agree to the above proposition.

(Signed) "JAMES MAY.

"DAVENPORT, *March* 8, 1859."

I now demand of you a good and sufficient deed for Rose Bank farm, mentioned in said contract, and that all the incumbrances, judgments, and liens of every character be removed from said Rose Bank farm, so that I get a clear, perfect, and unincumbered title therefor. And I now offer, on my part, to comply with all the covenants and undertakings in

said contract mentioned, by me to be performed, and for this purpose I now offer you a good sufficient deed for all the real estate which I covenanted to convey to you; also the said notes against said A. H. Davenport, the mortgage securing the same, the collaterals thereto, and all other papers necessary to carry out my part of the said agreement, all of which the bearer of this will deliver to you, provided that you do comply with your part of the contract.

(Signed) A. LE CLAIRE.

DAVENPORT, IOWA, *March 9th*, 1860.

135 (Endorsed:) Notice from

136 *Duplicate.*

I will agree to compromise all matters in controversy or dispute between Antoine Le Claire, esq., and myself, if he will agree to the following proposition:

On my part I will agree to cancel my claim to what may be due or claimed by me from Mr. A. Le Claire, of every kind, and will give him a clear deed for Rose Bank, with all the improvements on the 143 acres of land, I binding myself to pay, within twelve months, the incumbrance that is now on the Rose Bank farm.

Said Antoine Le Claire on his part to give up and release all claims he has of every kind on me, and to give me a good and sufficient deed and transfer of all his right, title, interest, and claim to all that part of his reserve at the head of the rapids which he sold or contracted to sell to Captain A. H. Davenport, of Le Claire. He (A. Le Claire) putting me, in law and in fact, in his place and stead, as if he had made a clear deed to me when he made the contract to sell to said A. H. Davenport, said Le Claire transferring to me all kinds of payments and securities that he has received from said A. H. Davenport; said Le Claire also to give me a good deed for the lands he owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland, near said island.

It will be the understanding, if we make an amicable compromise, as I propose, that I am to give Mr. Le Claire no unnecessary trouble in any compromises or settlements that may be necessary to make with said A. H. Davenport, or others who have or may be purchasers of said land, but it is to be clearly understood that said Le Claire is to give me all the information, facility, and power he can to enable me to carry out, in good faith, all the conditions he has made up to this date with the said A. H. Davenport in the premises.

I do not consider the acceptance of this compromise on the part of Mr. A. Le Claire as his awarding to me all that I have a just right to claim, but I feel persuaded that Mr. Le Claire is under the erroneous impression that my claims are much less in equity and good conscience than they really are.

I will now prefer that we submit the matter as I proposed on the 26th ult. I have sanguine hopes that a fair, amicable adjustment would render me a more profitable award than I will get now by this proposition, and save me from a considerable amount of labor, care, and anxiety that must devolve upon me if my friend Le Claire accepts this.

(Signed) JAMES MAY.

DAVENPORT, *Feb'y 4th*, 1859.

I hereby agree to the following proposition.

(Signed) A. LE CLAIRE.

DAVENPORT, *March 8th*, 1859.

I hereby agree also to the above proposition.
(Signed) JAMES MAY.
DAVENPORT, *March 8th*, 1859.
Witness: JNO. P. COOK.

137 *Copy.*

Rec'd of Antoine Le Claire five promissory notes, of seven, thousand dollars each, executed by A. H. Davenport, & dated 7th May, A. D. 1857, payable respectively on the 1st day of January, A. D. 1858, 1859, 1860, 1861, & 1862, on one of which is endorsed a payment of three hundred & fifty dollars; rec'd also certain promissory notes against sundry persons particularly described in a rec'pt of said Le Claire to said A. H. Davenport, which latter notes were given to said Le Claire by said Davenport as collateral security for the payment of said notes so executed by said Davenport.

We also have the mortgage of Davenport to secure said first-named notes.

Now, when James May shall pay off & release all mortgages, jndg'ts, and other liens upon "Rose Bank" farm, (so called,) situated north of Duck Creek in Scott County, Iowa, & shall deliver to said Le Claire a good & sufficient deed therefor in accordance with a contract in writing signed by said Le Claire & May, on the 8th March, 1859, provided the same is done within one year from the 8th March inst., then & in that case we are to deliver to said James May all of the foregoing notes & mortgage.

On delivery of the collateral notes aforesaid said May shall execute a receipt to said Davenport for the same according to the existing contract between Le Claire & Davenport.

March 10th, 1859.
(Signed) COOK & SARGENT.

(Endorsed:) Mar. 10, '59. Receipt of Cook & Sargent for notes, etc., referring to compromise with A. Le Claire. No. 2.

138 *Copy.*

Capt. MAY:

I will make to you the following proposition in relation to sale of reserve property, to wit:

I will sell to you 100 acres of the choice land yet unsold for $15,000 00, I will sell to you 100 lots, (best,) 10,000 00; I will give you in notes secured on the property, which is nearly all improved, 15,000 00—$40,000 00.

The above is my offer in full for my notes which Mr. Le Claire holds; there are five notes, seven thousand dollars each, with endorsement, for the payment of which Mr. Le Claire holds a mortgage on the property, which mortgage you must release of record. I then will deed you the above land and lots, & give you up the notes above spoken of, either deeding you the land for which those notes were given, or guarantieng to you to make deeds to same, whenever the parties make payment to you. Those notes are secured, I think, for nearly double thier amount by improvements on the land for which they were given. The amount of my notes, including interest, is not far from thirty-seven thousand dollars, with seven years yet to run on part of them. I make this offer for the sake of compromising & settling up this matter.

April 12th, 1859.
Yours, &c.,
(Signed) A. H. DAVENPORT.

This proposition stands open for one week for acceptance or rejection.
(Signed) A. H. D.

(Endorsed:) Capt. James May, present. No. 1.

139 (Indorsed:) Apr. 12, '59. Copy. Agreement. A. H. Davenport, of Le Claire, Iowa.

140 In the circuit court of the United States in & for the district of Iowa.

JAMES MAY, PLAINTIFF,
vs.
EXECUTORS OF A. LE CLAIRE & OTHERS, DEFENDANTS.

It is agreed by and between the parties in the above-entitled, that the signatures to the papers attached and annexed to this writing are genuine, which are marked and numbered Nos. 1, 2, 3, & 4.
May 20, 1863.
(Signed) J. N. ROGERS,
Sol'r for certain of Def'ts.

141 *Replication of James May to answer of Davenport and Marguerite Le Claire.*

District court of the United States for district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT, MARGUERIETE LE Claire, executors of Antoine Le Claire, deceased, and said Marguerita Le Claire in her own right, & others. } In equity.

The replication of James May, complainant, to the answers of George L. Davenport & Margureta Le Claire, as executors of Antoine Le Claire, deceased, and to the answers of said Marguereta Le Claire, in her own right, & defendants.

This repliant, saving and reserving to himselfe all & all manner of advantag of exception which may be had & taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereinto saieth, that he doth and will ever maintain & prove his said bill to be true, certain, & sufficient in the law to be answered unto by the said defendants; and that the answer of
142 said defendants is very uncertain, evasive, & insufficient in law to be applied unto by this repliant; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things this repliant is ready to eaver, mantain, and prove, as this honerable court shall direct, and humbly prayes as in his said bill he hath already prayed.
July 7th, 1862.

LOWRIE AND MILLER,
RANKIN AND MILLER,
& JOSEPH WILLIAMS,
Att'ys for Pl'ff.

143 JAMES MAY
ves.
ANTOINE LE CLAIRE & OTHERS. } In chancery.

And now comes plaintiff, &, for replication to the answers of said George L. Davenport, John P. Cook, Louis C. Dessaint, & Ebenezer Cook, says the matters & things contained in his said original & amended petition are true; and that the several matters and things contained, alledged, & set forth in said several answers, so far as same are in denial of said original & amended petition, are not true; and this he verifies.

LOWRIE AND MILLER, and
RANKIN AND MILLER,
Att'ys for Pl'ffs.

144 *Defendant's exceptions to bill and revivor.*

In district court of United States for district of Iowa, southern division.

JAMES MAY
v.
GEORGE L. DAVENPORT, EXEC'R, & MARGUERITE Le Claire, exec'x, of last will of Antoine Le Claire, dece'd, & others. } In equity.

Exceptions taken by the defendants, George L. Davenport, executor. & Marguerite Le Claire, executrix, of the last will & testament of Antoine Le Claire, dec'd, and Marguerite Le Claire in her own right, to the bill of revivor filed by the said James May, complainant, and also the original bill of the said May & the amendment thereto.

1st. The said defendants except to so much of said bill of revivor as purports to set forth at length a copy of the original bill & exibits thereto, because the said matter excepted to is unnecessary & im-
145 pertinent, and tends to great prolixity, and to protract & draw out said bill of revivor to a great & unreasonable length, and is inserted in said bill of revivor in contravention of the rules and practice of the court.

2d. And said defendants further except to that part of said bill of revivor which purports to set forth at length copies of the said exibits attached to the original bill, for the same reasons as are hereinbefore assigned for the first exception.

3d. And said defendants further except to that part of said bill of revivor which purport to set forth at length a copy of the amendment filed by the complainant to his original bill, and of the several exibits thereto annexed, for the same reasons as are hereinbefore assigned for the exception.

4th. And said defendants further except to that part of said bill of revivor which purports to set forth at length copies of the several exibits annexed to the amendment filed by the complainant to his
146 original bill, for the same reasons as are hereinbefore assigned for the first exception.

5th. And the said defendants further except to so much of the original bill of the said complainant, and of the exibits thereto annexed, as purports to set forth at length & at large a copy of the deed therein referred to, executed by Antoine Le Claire & wife to Adrian H. Davenport, & styled in said bill "Exibit B," for the same reasons as are hereinbefore assigned for the first exception.

6th. And the said defendants further except to so much of said original bill, and of the exibits thereto annexed, as purports to set forth at length & at large copies of the promisory notes therein referred to, executed by Adrian H. Davenport to Antoine Le Claire, & styled in said bill "Exibit C," for the same reasons as hereinbefore assigned for the first exception.

7th. And the said defendants further except to so much of said
147 original bill, and the exibits thereto attached, as purports to set forth at length and at largarge a copy of the mortgage therein referred to, executed by said Adrian H. Davenport to Antoine Le Claire, & styled in said bill "Exibit D," for the same reasons as are hereinbefore assigned for the first exception.

8th. And the said defendants further except to so much of said original bill, and of the exibits attached thereto, as purports to set forth at length & at large a copy of the said mortgage therein referred to, executed by the complainant to George F. Kettell, and styled in said bill "Exibit F," for the same reasons as hereinbefore assigned for the first exception.

9th. And the said defendants further except to so much of the original bill, and the exibits thereto attached, as purports to set forth
148 at length & at large a copy of the published notice of sale under the deed of trust executed by said May to Charles Powers & referred to in said bill, which is styled in said bill "Exibit G," for the same reasons as are hereinbefore assigned for the first exception.

10th. And the said defendants further except to so much of the original bill, & the exibits thereto attached, as purports to set forth at length & at large a copy of the deed, herein referred to, executed by Charles Powers to Louis C. Dessaint, & styled in said bill "Exibit H," for the same reasons as are hereinbefore assigned for said first exceptions.

11th. And said defendants further excepts to so much of said original bill, and of the exibits thereto annexed, as purports to set forth at length & at large a copy of the deed, therein referred, executed by said Louis C. Dessaint to Ebenezer Cook, & styled in said bill "Exibit J," for the same reasons as are hereinbefore assigned for the first
149 exception.

12th. And said defendants further except to so much of the original bill, & the exibits thereto annexed, as purports to set forth at length & at large a copy of the deed, therein referred to, executed by Ebenezer Cook to George L. Davenport, styled in said bill "Exibit K," for the same reasons as are assigned hereinbefore for the first exception.

13th. And said defendants further except to all that part of said original bill, and the exibits thereto attached, which purports to set forth at length & at large a copy of the petition therein alleged to have been filed by George L. Davenport, as plaintiff, against said complainant as defendant, in the district court of Scott County, Iowa, & styled in said bill "Exibit L," for the same reasons as are hereinbefore assigned for the first exception.

150 14th. And said defendants further except to all that part of said original bill, & of the exibits thereto attached, which purports to set forth at length & at large the contents of a certain deposition, alleged in said bill to have been taken in a certain suit in the district court of Scott County, Iowa, between George L. Davenport, plaintiff, and said James May, defendant, which said deposition is set forth in said bill under the style or title of "Exibit M," because the said matter excepted to is wholly foreign & impertinent to this cause, & is unnecessarily, impertinently, & improperly inserted in the said bill, and

sets forth no facts material to the cause; but only certain alleged testimony of a witness not proper for introduction into the bill; and because the said deposition having been taken in another cause, not between the same parties, nor referring to the same subject-matter, nor involving the same issues, cannot be read in evidence on the
151 hearing of this cause; and also for the same reasons hereinbefore assigned for the first exception.

15th. And said defendants further except to all that part of the amendant filed by the complainant to his original bill, and of the exibits thereto attached, as purports to set forth at length and at large copies of the original notice, petition, answers, decree, affidavits, motions, execution, & return thereto, and other proceeding, in a certain suit for foreclosure of mortgage in said amendment referred to, in the district court of Scott County, Iowa, between Antoine Le Claire, plaintiff, and A. H. Davenport & others, defendants; which said copies are set forth in said amendment respectively under the titles of "Exibit O," "Exibit P," "Exibit Q," "Exibit R," "Exibit S," "Exibit T," "Exibit U," & "Exibit V;" and also to that part of said amendment, & the exibits thereto, which purports to set forth at length & at large a copy of a deed there-
152 in alleged to have been executed by James Thorington, sheriff of Scott County, Iowa, to Antoine Le Claire, which is styled "Exibit W" in said amendment, for the same reasons as are hereinbefore assigned for the first exception.

And said defendants move that all of the said parts of [of] the said original bill, amendment thereto, & bill of revivor above excepted to, & each of them, be stricken out, with costs.

JOHN N. ROGERS, *Sol'r for Def'ts,*
GEORGE L. DAVENPORT, *Ex'r,*
& MARGUERITE LE CLAIRE, *Exe'x,*
& MARGUERITE LE CLAIRE.

153 (Indorsed:) Copy. U. S. district court, district of Iowa, southern division. James May vs. George L. Davenport, exec'r, & Marguerite Le Claire, executrix, of Antoine Le Claire, dec'd, & als. Exceptions of def'ts, Geo. L. Davenport, exec'r, & Marg. Le Claire, exec'x, and Marg. Le Claire, to bill of revivor, original bill, & amendment.

Filed March 27th, 1862.

J. C. BURNS, *Clk,*
By EDW'D MUMM, *Dep'y.*

154 *Transcript from district court.*

JAMES MAY
vs.
ANTOINE LE CLAIRE ET AL. } In chancery.

In U. S. dist. court, district of Iowa, southern division.

Clerk will issue subpœna returnable to rule day in June next.
Apr. 4, '61.

LOWRIE & MILLER,
RANKIN & MILLER,
Solicitors for Pl'ff.

Chancery subpœna.

UNITED STATES OF AMERICA,
District of Iowa, Southern Division, ss:

United States of America to Antoine Le Claire, Louis C. Dessaint, Ebenezer Cook, George Sargent, John P. Cook, & George L. Davenport, greeting:

We command you, and each of you, appear before Hon. James M. Love, the judge of the district court of the United States for the district of Iowa, at Keokuk, in southern division of said district, on the 3d day of June next, A. D. 1861, to answer the bill of complaint of James May, this day filed in the clerk's office of said court, at Keokuk, then and there to receive and abide by such judgement and decree as shall then
155 or thereafter be made, upon pain of judgement being pronounced against you by default.

To the marshall of the district of Iowa.

Witness the Hon. James M. Love, judge of said court, at Keokuk, this 4th day of April, A. D. 1861, and of the independence the 85th year.

[SEAL.]

J. C. BURNS, *Clerk*,
By A. T. WALLING, *Dep't.*

MEMORANDUM.—The within-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at Keokuk aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against them as confessed, and a decree entered thereon accordingly.

J. C. BURNS, *Clerk*,
By W. T. WALLING, *Dep't.*

(Endorsed:) Returnable to rule day first Monday in June, A. D. 1861.
J. C. BURNS, *Clerk*,
By W. T. WALLING, *Dep't.*

Filed May 22, '61.

APRIL 4TH, 1861.—This subpœna came in my hands.
L. SUMMERS,
By J. Y. ANTHONY, *Dep'ty.*

156 On the 26th day of April, A. D. 1861, I served the within subpœna on Antoine Le Claire, Louis C. Dessaint, Ebenezer Cook, John P. Cook, and Geo. L. Davenport, by reading to each and all of them, personally, and give each of them a copy of the original subpœna in chancery, according to law.

L. SUMMERS, *U. S. Marshall*,
By J. Y. ANTHONY, *D'p'ty.*

Fees.

Mileage	$15 00
Service	12 00
Six copies, 40 cts.	2 40
	$29 40

We accept service of this subpœna and acknowledge receipt of copy for Geo. B. Sargent.

COOK & DRURY,
Sol. for Def'ts.

Davenport, Iowa, May 24, 1861.—In district court of U. S. for district of Iowa, southern division..

JAMES MAY, COMPLAINANT,
vs.
ANTOINE LE CLAIRE & ALS., RESPONDENTS. } In equity.

To the clerk of said court:

Please to enter my appearance for the defendants in the above-entitled cause, in which the subpœna is returnable June 3 next, & oblige,

Yours, resp'y,

JOHN N. ROGERS.

Filed May 29, '61.

157 In the district court of the United States, district of Iowa, southern division.—At rules, Aug. 5, 1861.

JAMES MAY
vs.
ANTOINE LE CLAIRE. } In chancery.

And now comes plaintiff, by his attorney, Lowrie & Miller, & Rankin & Miller, & moves the court for leave to file an amended bill, and which, being considered by the court, it is order that plaintiff's motion be and is hereby allowed; and thereupon plaintifts file his said amended bill.

Friday, September 20, 1861.

JAMES MAY
vs.
ANTOINE LE CLAIRE ET AL. }

And now comes on this cause for hearing on demurrer of defendants to pl't'ff's petition—Rankin & Miller, & D. F. Miller for plaintiff, and John N. Rogers for defendant—and the argument being closed, same was taken under advisement by the court.

September 23d, 1861.

JAMES MAY
vs.
ANTOINE LE CLAIRE ET AL. }

And now comes on this case for hearing on demurrer of defendants to plaintiff's petition, and the court, having heretofore heard the argument of counsel, and being fully advised in the premises, order that
158 said demurrer be overruled, and that defendant have leave to answer by second rule day.

Saturday, October 5, 1861.

JAMES MAY
vs.
ANTOINE LE CLAIRE ET AL. } 59.

This day this cause came on to be heard on motion of defendant to strike from the files the amended petition; and the court, being advised in the premises, overruled motion.

Friday, March 28th, 1862.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'C'R, & MARGUERITE LE CLAIRE, EXR., OF ANTOINE LE CLAIRE, DEC'D; MARGUERITE LE CLAIRE, ET AL. } 59.

The defendants, George L. Davenport, executor, Marguerite Le Claire, executrix, of Antoine Le Claire, dec'd, & Marguerite Le Claire, having filed exceptions to the bill of revivor filed by complainant herein against them, and also to the original bill and amendment filed thereto for impertinence, proloxity, &c., it is ordered that it be referred to John H. Craig, esq., as special commissioner, to examine the said bill of revivor, original bill, & amendment, and the said exceptions taken thereto, & report whether the matters excepted to, or any part of them, are improperly inserted in said bill or amendment for any of the reasons for which the same are excepted to, whether the same, or any part thereof, should be expunged.

159 Friday, April 4, 1862.

JAMES MAY
vs.
ANTOINE LE CLAIRE, LOUIS C. DESSAINT, J. P. COOK, ET AL. } Ch'y, 59.

This day comes plaintiff, and moves the court that this cause may be ordered to stand revived against all the defendants named in plaintiff's bill of revivor on whom service has been made, as shown by the marshall's return on the subpœna issued in said case, whose names are as follows, to wit, Marguerite Le Claire & George L. Davenport, executors of Antoine Le Claire, deceased; & Marguerite Le Claire, Joseph A. Le Claire, David A. Le Claire, David Napoleon Le Claire, George Le Claire, Louis Le Claire, Antoinette Le Claire, and Mary Le Claire, devisees of said Antoine Le Claire, plaintiff appearing by Lowrie & Miller, Rankin & Miller, & Joseph Williams, his attorneys; and defendants, by J. N. Rogers, their attorney. The court, being satisfied in the premises, sustains the motion.

Saturday, April 5, 1862.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'C'R, MARGUERITE Le Claire, excr., of Antoine Le Claire, dec'd, & others. } Ch'y, 59.

This cause coming on to be heard on the exceptions filed by complainant to the master's report under the order of reference of the exceptions taken to the original and amended bill and bill of revivor, for impertinence and prolixity, and said exceptions having being argued by counsel for the parties respectively, and the court being fully advised in reference thereto, it is ordered that said exceptions to so much of said report as sustains the exceptions taken by the def'ts to said bill of revivor be overuled, and that the said portion of said report be confirmed, and the matters in said bill of revivor excepted to by defendants, to wit, all that part of said bill of revivor which purports to set forth at length "copies of the original bill and exhibits thereto annexed, and of the amended bill" be expunged from said bill of revivor; and it is further ordered that the exceptions taken by complainant to the remainder of said report be, and the same are hereby, sustained; and it is further ordered that the master's compensation for his services on said reference be fixed at the sum of dollars, and that the same be borne equally by the complainant and defendants, defendants excepting, and be paid to the said master in five days from this date.

160

And it is further ordered that the complainant have leave to amend his bill of revivor, and that the said defendants thereto, as to whom the suit has been revived, do answer or demur thereto on or before the rule day next succeding the rule day on or before which the said amended bill of revivor shall be filed; and it is further ordered that this cause be continued.

161

Monday, June 2d, 1862.

JAMES MAY
vs.
MARGUERITE LE CLAIRE, GEORGE L. DAVENport, executors, & Margaret Le Claire, Francis Le Claire, & others, devisees, of Ant. Le Claire, dec'd.

Upon motion of plaintiff, by his attorney J. Williams, E. Jeffords, esq., is hereby appointed guardian ad litem for David Napoleon Le Claire, George Le Claire, Louis Le Claire, Antoinette Le Claire, & Mary Le Claire, minor heirs of Antoine Le Claire, dec'd.

Monday, July 7th, 1862.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERITE LE Claire, executors of Antoine Le Claire, deceased, & others. } Ch'y, 59.

This day this cause coming on to be heard upon motion of com-

plainant for an order to take the testimony of the witnesses in this cause by depositions, in compliance with the law in such case provided, the court, being satisfied in the premises, sustains the motion.

162 DISTRICT COURT OF THE UNITED STATES,
District of Iowa, Southern Division:

I, J. C. Burns, clerk of the district court of the United States in and for the district aforesaid, certify the above and foregoing to be a true and correct transcript of the record entries in the above-entitled cause, as the same appear of record on the records of said court in my office in said district, at Keokuk.

Witness my hand & the seal of said court this 10th Nov., 1862.

J. C. BURNS, *Clerk*,
By EDW'D MUMM, *Dep'ty.*

A true copy of the transcript from the district court.

W. G. WOODWARD, *Clerk.*

163 2.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—

1st. Affidavit of complainant to obtain the testimony of several witnesses.
2d. Order extending time for depos'ns.
3d. Subpœna for witnesses & service.
4th. Copies of several notes of hand.
5th. Davenport's agreement to sell farms.
6th. Order of commissioner for taking depo's.
7th. Notice to J. N. Rogers, def'ts' counsel.
8th. Capias for Geo. L. Davenport.
9th. Certificate & order of commissioner.
10th. Deposition of Geo. L. Davenport.
11th. Do. of George H. Parker.

164 No. 1.

Affid't for test'y of certain persons.

District court of the United States, district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGAURITE Le Claire, executors of the last will, &c., of Antoine Le Claire, dec'd, et al. }

James May, of Rock Island, Rock Island County, and State of Illinois, being sworn, says that he is the plaintiff in the above-entitled cause; that he is advised by his counsel, and verely believes, that the

testimony of George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Motie, James Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bisliop, James May, and A. H. Davenport, all of whome are at present of Scott County, State of Iowa, is material and necessary for this deponant in the prosecution of such cause; that the said parties all live more than one hundred miles from the city of Des Moines, Iowa, where the court at which this deponant expects the cause will be tried is appointed by law to be held; and this deponant further says that he is informed and believes the above-named defendants reside in Davenport, Iowa, the place where the examina-
165 tion of the witnesses is expected to be taken, and that John N. Rodgers, the attorney of said defendants, resides at the same place, which is over one hundred miles from Des Moines, as aforesaid.

JAMES MAY.

Subscribed & sworn to before me, and in my presence, by James May, this 16th day of October, A. D. 1863.

R. LINDERMAN,
Co. Judge Scott Co., Iowa.

166 No. 2.

UNITED STATES OF AMERICA, *District of Iowa:*

I, W. G. Woodward, clerk of the circuit court of the United States in & for the district of Iowa, hereby certifey that the judge of the district court, & one of the judges of the said circuit court, has issued an order, dated October 8th, 1863, in the cause of James May v. the executors of the will of Antoine Le Claire & others, that the time for taking depositions in the above cause be extended to the first day of the next term of said circuit court, as the same now remains in my office.

Witness my hand & the seal of the said circuit court, at Des Moines, this 12th day of October, A. D. 1863.

W. G. WOODWARD,
Clerk of said Circuit Court.

167 No. 3.

Subpœna to witnesses.

STATE OF IOWA, *Scott County, ss:*

To George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Mottie, James Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, & A. H. Davenport:

You are each of you hereby summoned and required to be and appear before the undersigned, county judge in & for said county, at my office, at the court-house in Davenport, in the city of Davenport, in said county, on the 19th day of October, 1863, at 8 o'clock a. m. of that day, to give evidence in an action now depending in the district court of the United States, district of Iowa, southern division, wherein James May is plaintiff and Geo. L. Davenport & Margureta Le Claire, executors of Antoine Le Claire, dec'd, and others, are defendants, on the part of said plaintiff.

Given under my hand this 16th day of October, A. D. 1863.

R. LINDERMAN, *County Judge.*

168 Served the subpœna October 16th, 1863, by offering to read the

same to Geo. L. Davenport, which was waived by him, and by delivering him a copy. Fees demanded, & paid by me to him, one $\frac{12}{100}$ dollars.

JAMES THORINGTON, *Sh'ff*,
By J. C. TEARGARDEN, *Dep'y*.

Fees, 45, paid by pl'ff.

169, 170 No. 4.

EXHIBIT B.

$7,000.

On the first day of January, A. D. 1858, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, value received.

Witness my hand this 7th day of May, A. D. 1857.

A. H. DAVENPORT.

(Indorsement on back, folio 170, erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRLE.

$7,000.

On the first day of January, A. D. 1859, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent., value received.

Witness my hand this 7th day of May, A. D. 1857.,

A. H. DAVENPORT.

(Indorsement on back, folio 170:) This note is [is] extended 6 months from maturity, Jan'y 1st, 1858. Rec'd int'st on this note to July 1, '58, of three hundred & fifty dollars.

(Indorsement on back, folio 170, erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRLE.

$7,000.

On the first day of January, A. D. 1860, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six p'r cent. for one year; after that ten p'r cent. Int. to be paid annually. Value received.

Witness my hand, this 7th day of May, A. D. 1857.

A. H. DAVENPORT.

(Indorsement on back, folio 170, erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

171 $7,000.

On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six p'r cent. for

one year; after that ten p'r cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

A. H. DAVENPORT.

(Indorsement on back, folio 172, erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

$7,000.

On the first day of January, A. D. 1862, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six p'r cent. for one year; after that ten p'r cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

A. H. DAVENPORT.

(Indorsement on back, folio 172, erased:) Without recourse on me, pay to the order James May.

A. LE CLAIRE.

172 This sheet, containing copies of five notes which are on file in my office, in case A. Le Claire vs. Adrian H. Davenport et al., in Scott County, district court, instituted in April, 1860.

Those notes were procured from Hon. John P. Cook, one of the att'ys for plaintiff, on 15th day of May, 1861, with the endorsement & erasures, as represented by the copies.

IRA M. GIFFORD, *Clerk D. C.*

172 No. 5.

EXHIBIT "A."

APRIL 14TH, 1860.

To Mess. PARKER & EDWARDS:

I agree to sell the farm known as Rose Bank, formerly owned by Capt. Jas. May, for the sum of twelve thousand dollars cash. This proposition is not to be binding after thirty days from date, nor is it to prevent or interfere with my selling the said farm for said ammount to any other party offering the same within the said time.

GEORGE L. DAVENPORT.

173 No. 6.

Order of comm'r for taking.

District court of the United States, district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERETA LE Claire, executors of the last will, &c., of Antoine Le Claire, dec'd, et al. } In equity.

Let George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Motie, Jas. Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford,

M. D. Snyder, L. Bishop, James May, and A. H. Davenport, the witneses named in the within affidavit, be examined de bene esse before me, accordingly, at my office, in Davenport, Iowa, on the 19th day of October, 1863, at 8 o'clock a. m., and let one day's notice be given to John N. Rodgers, attorney for the defendants, of such examination.

Davenport, October 16th, 1863.

R. LINDERMAN,
County Judge Scott County, Iowa.

174 No. 7.

Notice to J. N. Rodgers.

District court of the United States, district of Iowa, southern division.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGURETIA LE CLAIRE, executors of the last will, &c., of Antoine Le Claire, dec'd, et al. } In equity.

To JOHN N. RODGERS, Esq., *Att'y for Def'ts.*

SIR: You are hereby notified that Geo. L. Davenport, G. C. R. Mitchel, J. W. Harrison, Joseph Motie, James Thorington, George H. Park, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, and A. H. Davenport will be examined de bene esse, before me, R. Linderman, county judge of the county of Scott, Iowa, at my office in the city of Davenport, Iowa, on the 19th day of October, A. D. 1863, at 8 o'clock a. m., as witnesses for the above plaintiff, according to the act of Congress in such case made and provide, at which time and place you are entitled by law to be present, and to put interrogations to the said witnesses.

Davenport, October 16th, 1863.

R. LINDERMAN, *County Judge.*

175 Served this notice Oct. 16th, 1863, by offering to read the same to John N. Rodgers, which reading he waved, and by delivering him a copy thereof.

JAMES THORINGTON, *Sh'ff*,
By J. C. TEAGARDEN, *Dep'ty.*

Fees, 50, paid by pl'ff.

176 No. 8.

Capias vs. Davenport.

SCOTT COUNTY, *the State of Iowa:*

To the sheriff of said county, greeting:

You are hereby commanded to take the body of George L. Davenport and bring him before me forthwith, to show cause why he should not be punished for contempt in not obeying a suppœna issued by me as county judge of said county on the 16th day of October, 1863, and duly served on said George L. Davenport on the same day, & his fees paid him for milage & attendance; said subpœna requiring the said Davenport to

appeare before me at my office in the city of Davenport, in said county, on the 19th day of October, 1863, at 8 o'clock a. m. of that day, to testify in an action now depending in the district court of the United States, district of Iowa, southern division, wherein James May is p'lff, and George L. Davenport & Margureta Le Claire, executors of the will of Antoine Le Claire, & others, are defendants.

Given under my hand and official seal this 19th day of October, 1863.

R. LINDERMAN,
County Judge Scott County, Iowa.

177 Served by bringing defendant into court Oct. 19, 1863.

JAS. THORINGTON, *Sh'ff*,
By JNO. M. LYTER, *D'pt.*

On the returne of this writ the said George L. Davenport appeared and excused himselfe for not obeying the said subpœna, and purged himselfe of contempt. His excuse was that he had been advised by his attorney that he need not appear, and that he acted upon such advice.

R. LINDERMAN, *County Judge.*

178 No. 9.

Certificate of comm'r.

STATE OF IOWA, *Scott County:*

Be it remembered that on the 16th day of October, A. D. 1863, at Davenport, Scott County, State of Iowa, James May personally appeared before me, R. Linderman, county judge of the county of Scott, State of Iowa, and made oath that he, the said James May, was plaintiff in a suit then depending in the district court of the United States, district of Iowa, southern division, wherein George L. Davenport and Margurite Le Claire, executors of the last will, &c., of Antoine Le Claire, et al., were defendants; that the testimony of George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Motie, James Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, and A. H. Davenport was material and necessary for him, the said plaintiff, in the prosecution of such suit, and that they, the said George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Motie, James Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, and A. H. Davenport, and all of them, lived in the county of Scott, State of Iowa, and more than one hundred miles from Des Moines, Iowa, where the court at which he, the said plaintiff,

179 expected the said cause would be tried, was appointed by law to be held; that the defendants in said cause resided at Davenport, Iowa, more than one hundred miles from Des Moines, aforesaid, and that John N. Rodgers, esq'r., there attorney at the same place, and the said James May, requested me that the said George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Motie, James Thorington, George H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, and A. H. Davenport might be examined according to the directions of the act of Congress in such case made and provided. Whereupon I ordered that the said George L. Davenport, G. C. R. Mitchell, J. W. Harrison, Joseph Mottie, James Thorington, G. H. Parker, A. C. Fulton, Ira M. Gifford, M. D. Snyder, L. Bishop, James May, and A. H. Davenport should be examined de bene esse before me, at my office in Davenport, Iowa, and that one day's notice should be

given to the said John N. Rodgers, esq'r, attorney for defendants, of such examination, to the end that he might, if he should see fit, be present at the examination and put interrogations; and I having satisfactory proof that such notice had been given, and as well the said James May as James Grant, att'y for George L. Davenport, witness, appearing before me at my office in Davenport, aforesaid, on this 19th day of October, A. D. 1863, I have therefore proceeded with the said examination.

180 No. 10.

1st dep. of G. L. D.

And the said George L. Davenport, being carefully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

(The said George L. Davenport objects to the taking of his deposition in this action, because he is one of the parties defendant thereto, and that no order has been made by the court for his examination in this cause.)

Quest. 1st. Do you know the parties, complainants and defendants, in this suit, or either and which of them; and how long have you known them, respectively, or such of them as you do know?

Ans. I know all the parties; have known them for many years—ever since they have been residents of Davenport; known Mr. May for 25 or 30 years.

Quest. 2nd. Were you acquainted with the late Antoine Le Claire, deceased; and, if so, when did he die, and who are his executors?

Ans. I was acquainted with Antoine Le Claire, now deceased. He died, I think, on the 24th day of September, 1861. Myselfe and Margueréta Le Claire, widow of dec'd, are executors.

181 Quest. 3. Were you in the years 1859, and prior thereto, acquainted with the banking firm of Cook and Sargent? If yeas, state where this place or places of business were situated, who constituted said firm, and where and for what reason said firm discontinued business, if they have discontinued business.

Ans. 3. I was acquainted with them prior to 1859. Their place of business was at the corner of 2nd and Main streets, in the city of Davenport, Scott County, Iowa. The firm consisted of Mess. Ebeneezer Cook, George B. Sargent, John P. Cook, and John C. Davis. As far as I know they discontinued business in December, 1859. The reason of their discontinuing business, they failed.

Quest. 4. State, if you know, what disposition was made of the effects of said firm by them.

Ans. They delivered their effects amongst various creditors, so far as I know, untill they made an assignment. The assignment, I think, was in the spring following.

Quest. 5. State, if you know, who were the assignees of said firm.

Ans. J. W. Drury and myselfe.

182 Quest. 6. State, if you know, what business said Drury was engaged in at the time of the assignment.

Ans. He was a lawyer in the land business.

Quest. 9. State whether he was doing business alone or in partnership with some other person or persons at said time; and if with some other person or persons, give his or their name or names, and the name of the firm.

Ans. I do not remember whether he was in partnership with any one

at that time or not. He was in partnership afterwards with John P. Cook. Don't know whether said partnership existed at the time of the assignment or not. Don't remember when the partnership commenced,

Quest. 8. Had said J. W. Drury an office in the city of Davenport at that time or not?

Ans. He had an office in the banking-house of Cook & Sargent in Davenport.

Quest. 9. State, if you know, who occupied the office with him, and did business in connection with him.

183 Ans. John P. Cook done business there. I have also seen Messrs. Lindley & Clark there, and other parties whose names I do not remember.

Quest. 10. State whether or not you know the property known as Rose Bank farm, mentioned in the pleadings in this case.

Ans. I do.

Quest. 11. State, if you know, who is the present owners or reputed owner of said property.

Ans. I decline answering the question, if it is material; because, having already filed my answer in this cause, in which I have disclosed all my knowledge, information, & belief, and being advised by my council that that answers is evidence, and that my deposition, without an order of the court, is not evidence, I beg leave respectfully to decline to answer any question material to the cause until I am ordered by the court so to do.

Motion by complainant's council to compel witness to answers, and motion overruled.

R. LINDERMAN, *Co. Judge.*

184 Qu't. 12. Did or did not Antoine Le Claire, at any time during his lifetime, at what time, execute a deed of conveyance to any and to what person and persons, by name, of the premises known as Rose Bank farm,?

Ans. I decline to answer for the same reasons stated in my answers to qu't. No. 11.

Qu't. 13. Have you now, or have you not, since the death of Antoine LeClaire, had in your custody, possession, or power a certain deed of conveyance of Rose Bank farm, executed and acknowledged by said A. Le Claire, conveying said property to some person or persons, and to whom; if yea, how did the same come into your costody or power, and from whome did you receive or possess the same?

Ans. I refuse to answer for the same reasons stated in my answers to qu't. No. 11.

Quest. 14. Did or did not said Antoine Le Claire, in his lifetime, and at what time, and about what time or times, and when and upon what occasion or occasions, say, confess, acknowledge, or declare unto you or to any other person or persons, and whome, in your presence or

185 hearing, anything, and what, touching or concerning his having disposed of and executed a deed conveying said Rose Bank farm to one or more of the children of Joseph A. Le Claire? Declare the truth & your utmost knowledge and belief herin.

Ans. I refuse to answer for the same reasons stated in my answer to qu't. No. 11.

Qu't. 15. Did you at any time, and when and by whose authority, mak any and what offer to the said complainant relative to the subject-matters of this cause, or any & what part thereof; and, if yea, on whose

behalf? Set forth all you know touching or concering the matters required after by this interrogatory fully and at large.

Ans. I make same answer as to qu't. No. 11.

Qu't 16. Has or had not the said defendants, or either of them, at any time or times, and when in particular, and how or in what manner, and upon what occasion or occasions, any what notice, information
186 given to them, or either of them, by or on behalf of the said complainant or any other person or persons, and whome by name, or otherwise, & how that the said complainant had or claimed to have some right, title, or interest in or to the premises in the pleadings in this cause mentioned; and, if yea, was such notice or information so given to the said defendants, or either of them, before or after, and how long before or after, the said defendants, or either of them, had any and what interest, lien, or charge upon the said premises, or how otherwise?

Ans. 16. I make the same answer as qu't. No. 11.

Quest. 17. State whether or not the plaintiff James May, on or about the 20th of July, 1859, was possessed or entitled to, or intrusted in any real estate, or in any goods, chattels, personal estate and effects, in the States of Pennsylvania & Illioiois & Iowa, or in either of said States, as you know, or for any and what reason believe. If yea, set forth a full, true, and just inventory and account thereof, and of evry part thereof, and of all the particulars where the same is situated, whereof it consisted, and the quantities, qualaties, full, real, and true valuations of all such particulars; whether or no were any and what sums of money due or owing to said James May on said 20th day of July, 1859. If
187 yea, set forth a full, true, and particulars account of all and evry such sums, and from whom and for what the same were, respectively, due, and on any and what security or securities, and whether carrying intrest is not and at what rate, and how much was due for intrest thereon, respectively, on said 20th day of July, 1859; set forth all the matters afforsaid, according to the best of your respective knowledge, remembrance, information, and belief.

Ans. I make the same answers to qu't. No. 11.

Quest. 18. State whether or not the said James May, on the said 20th day of July, 1859, was indebted to any and what person or persons in any and what sum or sums of money. If yea, set forth the particular account of all and evry the debts whatsoever; were the justly due and owing from him and to whome, and for what and on what security (if any) the same were, respectively, due; set forth all the matters afforsaid, according to the best of your respective knowledge, rememberance, information, and belief.

Ans. I make the same answer as to quest. No. 11.

Quest. 19. Did you or did you not some time in the month of January, 1860, commence a suit in the district court of Scott County, Iowa,
188 for the purpose of quieting the title to the property known as Rose Bank farm? If yea, what disposition was finally mad of said suit?

Ans. I make the same answer as to quest. No. 11.

Quest. 20. Do you know of any other matters or things touching the matters in question in this cause which may tend to the benefit or advantage of said complainant therein? If yea, set forth the same, and all the circumstances and particulars, fully and at large, according to the best of your knowledge, remembrance, belief, as if you had been thereto particularly interrogated.

Ans. I make the same answers as to qu't. No. 11.

GEO. L. DAVENPORT.

189 No. 11.

Geo. H. Parker depos'n.

And the said George H. Parker, being carfully examined and cautioned, and duly sworn to testify the whole truth and nothing but the truth, saith:

Int. 1. Do you know the parties, complainant and defendants, to this suit, or either and which of them, and how long have you known them, respectively, or such of them as you do know?

Ans. I know all the parties; have been acquainted with them since the fall of 1854.

Int. 2nd. Do you or do you not know of the defendant Geo. L. Davenport having commenced a suit in the district court of Scott County, Iowa, some time in the month of Jan'y, 1860, for the purpose of quieting the title to a property known as Rose Bank farm? If yea, state your means of acquiring such knowledge.

Answer. I know that a suit of that kind was commenced by George L. Davenport, but cannot state the date without refering to the records. My means of knowing are from the fact that I am a member of the firm of Parker & Edwards, and was employed by James May, as his attorney, to resist the application. My memory has been re-
190 freshed by looking at the papers, and I find the suit was commenced Jan'y 13th, 1860.

Int. 3rd. State what disposition was made of the said suit, if you know.

Ans. It was dismissed by plaintiff, upon their own motion, on payment of costs by them.

Int. 4th. State whether or not the plaintiff James May, or his attorney, Parker & Edwards, at any time, & when and upon what occasion, requested the defendant Geo. L. Davenport to dismiss said suit.

Ans. I cannot answer for James May. I can only say that Parker & Edwards never requested the dismissal of [of] said suit, but resisted the application to dismiss as the attorneys of James May.

Int. 5. Did you or not on the 20th day of Jan'y, 1860, take the deposition of Charles Powers, (since deceased,) in relation to the subject-matter of this suit, before William Hall, a notary public? If yea, you will please state who were present, and if any attorneys were present, who they represented; and also whether said deposition was completed.

191 Ans. 5th. The deposition of Charles Powers was taken before William Hall, at that time, concerning the sale of the property known as the Rose Bank farm. Notice was served upon Mess. Putnam & Leake, of the taking of the same, as attorneys for Geo. L. Davenport & Antoine Le Claire. Mr. Leake appeared before the notary in pursuance of said notice, and was there the most of the time when the deposition was being taken. The said deposition was filed in the district court of Scott County, for the purpose of being used in any case that might arise touching this property, having been taken under a provision of the code for perpetuating testimony.

Int. 6. Have you or not at any time acted as attorney for the plantiff, James May, in negotiating with the defendants for the settlement of matters at issue in this cause?

192 Ans. I have acted as attorney for James May, and have attempted to effect a settlement between him & Antoine Le Claire & George L. Davenport and others, through their attorneys, of the controversies which, I suppose, are in issue in this suit.

Int. 7. You may state what passed between you and said parties, or their attorneys, in relation to the settlement of said controversy. Declare the truth, and your utmost knowledge and belief herein.

Ans. I have no distinct recollection of the exact language in which the negotiations were had, and can only give the substance of what passed at several interviews, after the sale of Rose Bank farm by Charles Powers, as trustee. As the attorney of Mr. May, I called upon John P. Cook, of the firm of Cook & Lindley, who I understood to be one of the attorneys who represented Antoine Le Claire in the transaction. Was informed by him that nothing but a literal compliance
193 with the contract between Mr. Le Claire & Mr. May, that is, the removal of all encumbrances on Rose Bank farm, would be satisfactory to Mr. Le Claire; that certain notes & papers were held by Cook & Sargent, subject to Mr. May's order—when that was done, and would not, or any portion of them, be delivered up until it was done, and that he was acting under the instructions of Mr. Le Claire in saying so. I asked him if he meant by removing all encumberances from Rose Bank farm, that it should be redeemed or purchased from the ostensible purchaser at the sale made by Charles Powers, as trustee. He said that he included that as among the encumberances. I then went to Mr. Dessaint, who at that time held the title, and he refered me to John P. Cook, to arrange the matter, as his attorney. Shortly after, learning that the property had passed into the hands of Geo. L. Davenport, I applied to him for terms of purchase of the property afforesaid, and received in writing the following proposition, which is hereto attached, marked Exhibit A.

194 Int. 8. State whether or not you have ever seen the papers mentioned in your last answer as having been left with Cook by Le Claire, to be delivered to James May, when certain conditions had been complied with by said May.

Ans. I did not see them at the time refered to in my last answer, nor at any time previous. I have since been shewn papers on file in the office of the clerk of the district court of this county, which I believe to be the same, or a portion of them, that were at that time on deposit with Mess. Cook and Sargent, in pursuance of the agreement between Messrs. Le Claire & May.

Int. 9. Please examine the papers now shown you, and state whether or no they are the same refered to. If yea, you will please attach a copy of the same to this your deposition marked Exhibit B.

Ans. I have examined the papers, & they are the same refered to in my last answer, and I hereto attach copies marked Exhibit B.

Int. 10. You will please examine the partially erased indorsements on the originals, of which Exhibit B is a copy, and state if you know in whose handwriting the same are.

195 Ans. to Q. 10. I have examined them, and my impression is that the "without recourse on me," "pay to order of James May," is in the handwriting of John P. Cook; that the signature, "A. Le Claire," is in the handwriting of Antoine Le Claire, deceased.

Int. 11. Do you know any other matter or things touching the matters in question in this cause which may tend to the benefit or advantage of the said complainant heren? If yea, set forth the same, and all the circumstances and particulars, fully & at large, according to the best of your knowledge, remembrance, and belief, as if you had been thereto particularly interrogated.

Ans. I have answered as fully as I can recollect upon the points interrogated, and can state nothing farther.

GEO. H. PARKER.

And I further certify that the preceeding depositions were reduced to writing by me, and signed by the said Geo. H. Parker & Geo. L. Davenport, respectively, and that I am not of council or attorney for either of the parties to the said suit, nor am I interested in the event thereof.

Dated Davenport, Oct. 19th, 1863.

[SEAL.]

R. LINDERMAN,
County Judge Scott County, Iowa.

[R. L., Oct. 19, '63]

196 (Indorsed:) Depositions of Geo. L. Davenport & Geo. H. Parker.
Suppressed. 25, equity. May vs. Le Claire, ex., et al.

Opened in court by order this 21 Oct., '63.

WOODWARD, *C. C. U. S.*

197 3.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE LE Claire and others. } In equity.

The following papers consist of—

1st. Exhibit R, of pl't'f: List of lands transferred by Cook & Sargent to A. Le Claire, with Exh. S, being special execution, to be found in No.

2d. Exhib. Q, of pl't'f: Deed of Geo. S. C. Dow & uxor to Jos. A. Le Claire, jr.

3d. Exhib. P: Being deed of Geo. L. Davenport et ux. to Jos. A. Le Claire, jr.

4th. Exhib. O: List of collaterals deposited by A. H. Davenport with Antoine Le Claire.

5th. Exhib. N: Letter from Ch's Powers to Wm. McLane.

6th. Exhib. L: Agreement between A. Le Claire & A. H. Davenport.

7th. Exhibit K: A. H. Davenport's mortgage to A. Le Claire.

198 8th. Exhibits F, G, H, I, & J: Being several notes from Davenport to Le Claire.

9th. Exhibit D: Letter of Ch's Powers to Wm. McLean.

10th. Exhibit E: Envelope of same letter.

11th. Exhibit C: Agreement to continue cause of Davenport v. May.

12th. Exhibit B: Letter from Davenport to Parker & Edwards.

13th. Exhibit A: Deposition of Ch's Powers, to be found hereafter in paper No. 28.

14th. Deed from Cook & Sargent to Antoine Le Claire.

15th. Deed of trust of May to Powers.

16th. Mortgage of May to Kettell.

17th. May's notice to Dessaint.

18th. Deed of Dessaint to E. Cook.

19th. Deed of E. Cook to G. L. Davenport.

20th. Powers' trustee's deed to Dessaint.

21st. Recorder's certificate to foregoing.

22d. Sophia Crosson's deed to A. Le Claire.

23d. Assignment of Cook & Sargent to J. W. Drury.

24th. Mortgage of Eb. Cook et al. to A. Le Claire.
199 25th. Assignment of Cook & Sargent to J. W. Drury et al.
26th. Deed: Geo. L. Davenport to J. A. Le Claire, jr.
27th. Deed: G. S. C. Dow to J. A. Le Claire, jr.
28th. Transcript of cause of G. L. Davenport v. J. May; in which occurs the deposition of Charles Powers.
29th. Transcript of A. Le Claire v. A. H. Davenport et al.
30th. Inventory of property of the firms of Cook & Sargent & of Sargent & Dixwell.

W. G. WOODWARD, *Clerk.*

200 No. 1.

Defendants' Exhibit "S."

Special writ of execution & return thereon, in suit for foreclosure in Scott County district court, Iowa, A. Le Claire vs. A. H. Davenport et al., a copy of which is to be found in bundle marked No. 1 in red ink.

EXHIBIT "R."

		Lot.	Block.	Price at which purchased.
	SCOTT COUNTY, IOWA.			
	In the city of Davenport.			
	W. ½	4	65	$2,000 00
	E. ½	5 and 7	70	2,000 00
	Less 2 feet from south side, and 2 feet from south side lot 3	6	69	2,500 00
		2	46	2,500 00
	JOHNSON COUNTY, IOWA.			
	In Iowa City.			
	80 x 136 ft. p't W ½ S. E. of S. E. ¼ sec. 3, T 79, R 6			$414 00
		6	12	506 00
	50 ft. N. & S. by 150 ft. E. & W. out of middle of	3 and 4	76	708 41
	And 50 ft. by 75 ft. S. E. ¼	8	71	
	80 x 90 ft	1	83	2,468 94
		5, 6, and 7	15	287 00
	Fractional block		23	138 00
		1, 2, 5, 7, & 8	16	2,109 44
		4	11	683 44
	"Lyon's Addition"	1, 2, 7, & 8	2	1,585 47

Remarks.	Parts of sections.	S.	T.	R.	No. acres.	Price at which purchased.
	BENTON COUNTY.					
	N. E. ¼	27	82	9	160	$825 60
	CALHOUN COUNTY.					
	N. E. fr. ¼	4	86	32	160 30-100	358 40
	CARROLL COUNTY.					
	S. ½	10	83	35	320	716 80
	N. W. ¼	22	83	35	160	358 40
	N. W. ¼	25	83	35	160	358 40
	S. W. ¼	14	83	35	160	358 40
	CERRO GORDO COUNTY.					
	N. E. ¼	9	94	22	160	333 60
	N. E. ¼ of N. E. ¼ and W. ½ N. E. ¼	33	96	19	120	265 60
	S. ½ of S. W. ¼ and S. W. ¼ of S. E. ¼	24	95	19	120	265 60
	S. E. ¼ of N. W. ¼ and S. ½ of N. E. ¼	6	96	19	120	265 60

DES MOINES COUNTY.					
S. E. ¼ of N. W. ¼	26	71	4	40	294 40
W. ½ of S. W. ¼ and W. ½ of S. E. ¼	36	71	4	160	$1,177 60
FRANKLIN COUNTY					
All of	6	93	21	714 70-100	1,414 40
N. fr. ½ of N. E. ¼ & N. fr. ½ of N. W. ¼	5	93	22	236 34-100	522 40
IOWA COUNTY.					
S. fr. ¼ of N. W. ¼	6	79	10	85 95-100	478 40
N. fr. ¼ of N. W. ¼	30	79	11	86 70-100	294 40
N. E. ¼ of N. E. ¼	15	81	10	40	147 20
S. ½ of S. E. ¼ and N. E. ¼ of S. E. ¼	3	79	11	240	1,067 20
W. ½ of S. W. ¼	5	79	11	80	404 80
N. E. ¼ of N. W. fr. ¼ & N. W. ¼ of N. E. fr. ¼	6	79	11	80 86-000	404 80
S. W. ¼ of N. E. ¼ & S. E. ¼ of N. W. ¼	6	79	11	80	404 80
W. ½ of N. W. fr.	6	79	11	99 78-100	515 20
N. E. ¼	10	79	11	160	736 00
S. W. fr. ¼ of S. W. ¼	19	79	11	46 87-100	165 60
E. ½ of N. E. fr. ¼	4	79	12	82 89-100	331 20
S. ½ of S. E. ¼	36	80	12	80	412 80
S. W. ¼ of N. W. fr. ¼ & N. ½ of S. W. fr. ¼	6	80	12	132 24-100	331 20
S. E. ¼ of S. E. ¼	1	80	10	40	89 60
W. ½ of S. E. ¼ and E. ½ of S. W. ¼	19	79	11	160	614 40
S. W. fr. ¼	31	79	12	172 79-100	634 40
S. ½ of N. W. ¼	2	79	11	80	404 80
S. E. ¼ of S. W. ¼ & S. W. ¼ of S. E. ¼	31	80	11	80	441 60
N. ½ of N. E. ¼ & N. ½ of N. W. ¼	34	80	11	160	809 60
JASPER COUNTY.					
S. W. ¼ of N. E. ¼	25	78	17	40	88 80
N. ½ of N. E. ¼	25	78	17	80	203 20
S. E. ¼ of N. W. ¼	27	78	17	40	95 20
N. W. ¼ of N. E. ¼	27	78	17	40	95 20
S. W. ¼ of S. E. ¼	31	79	19	40	169 40
N. W. fr. ¼	31	79	19	172 27-100	736 00
N. W. ¼ of S. W. fr. ¼	31	79	19	46 47-100	257 60
S. E. ¼ of S. W. ¼	31	79	19	40	220 80
S. W. ¼ of N. W. ¼	10	80	17	40	118 40
N. E. ¼ of N. W. ¼	15	80	17	40	118 40
JEFFERSON COUNTY.					
S. ½ of N. E. ¼	8	72	10	80	712 00
JOHNSON COUNTY.					
N. E. ¼ of N. E. ¼	32	79	8	40	236 00
N. ½ of S. W. ¼	27	79	8	80	412 80
S. E. ¼ of N. W. ¼	25	81	5	40	147 20
S. W. ¼ of N. W. ¼	20	81	6	40	147 20
S. E. ¼ of N. W. ¼	14	80	6	40	984 40
S. W. ¼ of S. W. fr. ¼	19	79	8	42	169 60
S. E. ¼ of N. W. ¼	10	79	8	40	380 00
W. ½ of S. W. fr. ¼	30	79	8	85 31-100	368 00
W. ½ of N. W. fr. ¼	30	79	8	84 33-100	368 00
S. E. ¼ of N. W. ¼	30	79	8	40	176 80
N. W. ¼ of N. W. ¼	33	79	8	40	236 00
N. W. ¼ of S. W. fr. ¼	18	79	7	51 08-100	260 00
JONES COUNTY.					
S. W. ¼ of N. E. ¼	2	83	2	40	129 60
S. W. ¼ of S. W. ¼	13	83	3	40	129 60
S. ½ of S. E. ¼	29	83	1	80	236 00
S. W. ¼ of N. E. ¼	17	83	2	40	129 60
N. W. ¼ of N. W. fr. ¼	1	83	2	40 08-100	8c 80
Lot No. 3	7	83	2	44¼	151 60
MUSCATINE COUNTY.					
Fr. section	31	78	4	698	3,099 20
N. E. ¼ of S. E. ¼	17	76	4	40	147 20
N. W. ¼ of S. E. ¼	13	78	4	40	220 80
N. W. ¼ of S. W. ¼	18	78	2	38 49-100	113 60
S. E. ¼ of S. E. ¼	13	78	3	40	113 60
N. ½ of S. E. ¼	12	76	3	80	220 80
S. E. ¼ of S. W. ¼ & N. ½ of S. W. ¼	6	77	4	120	707 20
N. E. ¼ of N. W. fr. ¼	7	77	4	40	252 80
POWESHIEK COUNTY.					
E. ½ of N. W. ¼	32	78	13	80	236 80

W. ¼ N. W. fr. ¼ & W. ½ S. W. fr. ¼	19	79	13	172 31-100	423 20
S. W. ¼ of N. W. ¼	28	79	13	40	118 40
W. ½ of S. W. fr. ¼	30	79	13	89 721-00	257 60
S. E. ¼ of S. E. ¼	35	78	16	40	147 20
S. W. ¼ of S. E. ¼	5	79	16	40	147 20
N. W. ¼ of N. W. fr. ¼	6	79	16	40 39-100	147 20
N. E. ¼	35	81	16	160	588 80
S. E. ¼	36	81	16	160	588 80
Lots 1, 8, 9, & 12	4	78	16	182 36-100	478 40
N. W. ¼ of S. W. ¼	4	78	16	40	96 00
N. E. ¼ of N. W. ¼	30	78	16	40	88 80
S. W. ¼ of S. E. ¼	5	78	13	40	118 40
S. ½ of N. W. ¼	8	78	13	80	236 00
N. E. ¼ of N. W. ¼	8	78	13	40	118 40
N. W. ¼ of N. E. ¼	8	78	13	40	118 40

201 (Indorsed:) Lands transferred to A. Le Claire by Cook & Sargent.

202 No. 2.—*Plaintiff's exhibit marked "Q."*

EXHIBIT Q.

This deed of bargain & sale made & executed this first day of February, A D. 1862, by and between Geo. S. C. Dow and Elizabeth C. Dow, of the county of Scott and State of Iowa, parties of the first part, and Joseph A. Le Claire, jr., of said county, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of ten dollars to them paid by the said party of the second part, the receipt of which is hereby acknowledged, hath granted, bargained, and sold, and do, by these presents, grant, bargain, sell, convey, and confirm, unto the said party of the second part, his heirs and assigns, forever, the certain tract or parcel of real estate situated in the county of Scott, State of Iowa, to wit: The southeast quarter of section number fourteen, (14,) township number seventy-eight, (78,) range three (3) east, of 5th P. M.; to have and to hold the premises above described, with all the appurtenances thereto belonging, unto him, the said second party, and to his heirs and assigns, forever. And the said Elizabeth C. Dow, wife of the said George S. C. Dow, hereby releases and relinquishes all her rights of dower in and to the foregoing described premises.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein written.

(Signed) GEO. S. C. DOW. [SEAL.]
ELIZABETH C. DOW. [SEAL.]

STATE IOWA, *Scott County, ss:*

Be it remembered that on this 1st day of February, A. D. 1862, before the undersigned, a notary public in and for said county, personally appeared Geo. S. C. Dow & Elizabeth C. Dow, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed, and that they executed the same for the pur-
203 poses therein mentioned. And the said Elizabeth C. Dow, wife of the said Geo. S. C. Dow, acknowledged that she relinquished all her right of dower in and to the premises described.

Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.] (Signed) W. F. KIDDER,
Notary Public Scott Co., Iowa.

(Endorsed:) Q. Warranty deed. Geo. S. C. Dow & wife to Joseph A. Le Claire, jr.

STATE OF IOWA, *Scott County:*

Filed for record this 3d day of February, A. D. 1862, at 2 o'clock 45 minutes p. m., and recorded in book 27 of deeds, page 192.

A. F. MAST, *Recorder*,
By R. SMETHAM, *Deputy.*

204 No. 3.—*Plaintiff's exhibit marked "P."*

EXHIBIT "P."

This indenture, made and entered into this 20th day of January, A. D. 1862, by and between George L. Davenport & Sarah G. Davenport, his wife, of Davenport, county of Scott, and State of Iowa, of the first part, and Joseph A. Le Claire, junior, of Davenport, county of Scott, and State of Iowa, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of seven thousand dollars, (the receipt whereof is hereby acknowledged,) have bargained & sold, and, by these presents, do grant, bargain, sell, and forever quitclaim, unto the said party of the second part, his heirs, executors, and assigns, all interest, claim, or demand in and to the following described real estate, situated in the county of Scott, and State of Iowa, to wit: The southeast quarter ($\frac{1}{4}$) of section number fourteen (14) in township No. seventy-eight (78) north, of range three (3) east, of the 5th principal meridian, excepting fifteen $\frac{1}{100}$ ($15\frac{1}{100}$) acres in west half ($\frac{1}{2}$) of said section, and on the south side of Duck Creek; to have and to hold the same, with all the appurtenances thereunto belonging, unto the said party of the second part, his heirs, executors, and assigns, forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written, and the said party of the first part hereby warrants the title as against any person or persons claiming by, through, or under him, said Davenport.

(Signed) GEO. L. DAVENPORT. [SEAL.]
(Signed) SARAH G. DAVENPORT. [SEAL.]

Executed in presence of—

STATE OF IOWA, *Scott County:*

Be it remembered that on this 21st day of January, A. D. 1862, before the undersigned, a notary public in and for said county in
205 the State aforesaid, personally appeared George L. Davenport and Sarah G. Davenport, his wife, to me personally known to be the identical persons whose names are signed to the foregoing instrument of writing as grantors, and acknowledged that they executed the same freely & voluntarily for the uses and purposes therein expressed; and the said Sarah G. Davenport, wife of the said George L. Davenport, acknowledged that she executed said instrument for the express purpose of relinquishing all right of dower in the premises above conveyed.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year last above written, at my office in Davenport, in said county & State.

[NOTARIAL SEAL.] CHAS. E. PUTNAM,
Notary Public.

(Endorsed:) "P." Quitclaim deed. Geo. L. Davenport & wife to Joseph A. Le Claire, junior.

STATE OF IOWA, *Scott County:*

Filed for record this 1 day of February, A. D. 1862, at 11 o'clock 30 minutes a. m., and recorded in book 27 of deeds, page 184.

(Signed) A. F. MAST, *Recorder*,
By R. SMETHAM, *Deputy.*

206 No. 4.—*Plaintiff's exhibit marked "O."*

EXHIBIT O.

Received of Adrian H. Davenport the following promissory notes, to wit:

Drawer.	Amt.	Date.	Due.	Endorsed.
J. W. Buckman	361 12	M'ch 18, '56	M'ch 18, '57	$23 50, Dec. 20, '58
Do	361 12	M'ch 18, '56	M'ch 18, '58	
Do	361 12	M'ch 18, '56	M'ch 18, '59	
Jas. Coe, Jas. A. Lewis, and A. J. Johnson	342 50	Dec. 9, '57	Dec. 9, '59	
J. G. Huntington	247 00	June 3, '55	June 3, '59	
Jas. Coe, Jas. A. Lewis, and A. J. Johnson	300 00	Dec. 9, '57	Dec. 9, '60	
Do do do	500 00	do	June 15, '58	$20, June 21, '58
Do do do	400 00	do	Dec. 9, '58	
Dennis Barnes, mayor	250 00	June 9, '55	June 9, '57	
Dennis Barnes, mayor	250 00	June 29, '55	June 29, '58	
Conrad Arnold	100 00	Oct. 25, '58	Oct. 25, '59	
P. M. McIntire	343 33	Ap'l 20, '57	Dec. 20, '58	
Do	343 33	do	July 1, '58	Oct. 6, '57, $35
Do	343 33	do	Dec. 20, '58	June 3, '58, $40
John H. Suter	350 00	Ap'l 15, '57	Oct. 1, '58	July 1, '58, $40
Do	175 00	do	do	July 2, '58, $4 60
Andrew Black	100 00	Sept. 20, '57	Sept. 20, '58	
Do	100 00	do	Sept. 20, '59	
Anderhalter	225 00	Ap'l 20, '57	July 20, '58	
Do	225 00	do	Dec. do	
Do	225 00	do	Jan'y 1, '58	
Wm. Burton	301 42	Oct. 10, '57	Dec. 25, '57	$25
Do	257 33	Oct. 10, '57	July 20, '58	
Do	257 33	do	Do 20, '59	
J. R. Morgan	60 50	do	Dec. 10, '57	
Thos. F. Phares	225 00	Ap'l 1, '57	Ap'l 1, '58	
Thos. F. Phares	225 00	Ap'l 1, '57	Ap'l 1, '59	
Thos. Crawford	186 00	Oct. 20, '58	Aug. 1, '59	
John Hawthorne	100 00	June 25, '57	June 25, '58	
Do	200 00	do	Jan'y 1, '58	
Do	100 00	do	Dec. 25, '58	Oct. 2, '58, $10
Rudolph Moran	233 33	Nov. 25, '57	Nov. 25, '58	Dec. 22, '58, $9
Do	233 33½	do	Do. '59	
Do	233 33½	do	Do. '60	
John C. Ayres	133 33	July 1, '57	July 1, '58	
Do	133 33	do	Dec. 1, '58	
Wm. Dippe	300 00	Aug. 25, 57	Aug. 25, '58	
Do	300 00	do	Do. '59	
Do	300 00	do	Do. '60	

Whereas said A. H. Davenport did, on the 7th day of May, A. D. 1857, execute and deliver unto Antoine Le Claire five promissory notes of seven thousand dollars each, payable respectively on the 1st day
207 of January, A. D. 1858, 1859, 1860, 1861, and 1862, which notes have been assigned and transferred to me by the said Antoine Le Claire: Now, the said A. H. Davenport has delivered the foregoing list of notes to me as a further security for the payment of his said notes and interest, in consideration of which I agree to extend the payment of the notes which I do so hold against said A. H. Davenport as follows:

The two first notes now due are extended until January, 1861, and the other three notes, not yet due, are extended for two years beyond the

respective time of their maturity; provided, and it is a part of this agreement, that said A. H. Davenport shall pay at least $800 of the interest upon said notes on or before the 1st day of October next, and the further sum of $800 by the 1st of January next, and the accrued interest unpaid on all of the said notes on the 1st January, 1861, shall be fully paid on that day.

208 No. 5.—*Plaintiff's exhibit marked N.*

[Copy.]

EXHIBIT "N."

PITTSBURGH, *June 27th*, 1859.

DEAR SIR: The lawyers wanted me to have an interview with the parties who are to furnish Capt. May the money, so at their request I have stayed over and seen them all, and take the train this noon. I believe everything is now fixed. They have written to Davidson & True for abstract of title, as I thought it would be got that way sooner than through M'Cosh, and they say they will hurry up matters as fast as possible. The money is all ready, and the parties are satisfied with the securities. I think though, if I had not been here, nothing would have been done. It has been awful hard work for me to chase up the capt., but I have stuck close to him until the thing was settled. No more time now; will write at next stopping place.

(Signed) Yours, C. P.

209 No. 6.—*Plaintiff's exhibit marked L.*

EXHIBIT L.

Memorandum of agreement, made and entered into this 27th day of March, A. D. 1860, by and between Antoine Le Claire and Adrian H. Davenport, both of the county of Scott and State of Iowa, witnesseth that heretofore, to wit, on or about the 7th of May, A. D. 1857, the said Antoine Le Claire bargained and sold unto the said Adrian H. Davenport certain real estate lying and being situate in the county of Scott aforesaid, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire, known as Le Claire's reserve, that had not been sold and conveyed by the said Le Claire prior to the said 7th of May, 1857, for which the said Antoine Le Claire then and there executed and delivered unto [to] the said Davenport a deed for said property for the consideration of the sum of thirty-five thousand dollars, for which consideration the said Davenport then and there executed unto the said Le Claire (5) five certain promissory notes, for seven thousand dollars each, payable respectively on the first days of January, A. D. 1858, 1859, 1860, 1861, & 1862; and to secure the purchase-money for which said notes were executed, the said Davenport then and there executed and delivered unto the said Le Claire a certain mortgage upon the said premises, which mortgage was duly filed for record in book "A" of town mortgages, page 352. Now, three of the aforesaid notes being past due, and the said Davenport having failed to pay the same, and being unable so to do, it is mutually agreed between the said parties that the said Le Claire will resume the title & possession of said property, and cancel said notes so given for the consideration money, provided the said Le Claire can perfect the title thereto by relieving it

from liens created by the said Davenport, or in consequence of judgements unsatisfied and outstanding against said Davenport. To
210 this end the said Le Claire will go on and foreclose the said mortgage, and if, at the sale of the property under such foreclosure, the same shall bring more than the amount of said notes & interest, then, and in that case, the said Davenport shall have the surplus, and if, on the contrary, the said property should sell for less than the amount of said notes and interest, the said Le Claire will release the said Davenport from the said notes; provided, always, and it is expressly understood by and between the parties that the said Davenport has placed in the hands of Cook & Drury a certain map or plot of the said real estate on which is marked the portions of said land sold by Davenport, and the particular tracts now remaining unsold, the said Davenport covenanting and agreeing that the portion of the said plot represented by him as unsold is free and clear, and that he hath not made any contract agreeing to sell any portion thereof.

It is understood and agreed by and between the parties that in case said Le Claire shall obtain title to the said premises that he will ratify and confirm the title to all such portions as the said Davenport represents as having been sold by him.

The said Davenport has this day assigned and delivered to the said Le Claire certain notes which were executed as part of the purchase-money for lots sold out of the said tract, amounting to about $16,000, including interest; most of which said notes are past due, and the said Davenport covenants and agrees with the said Le Claire that none of the makers of said notes have any just or legal offset to the same, unless it be for working out road-tax and painting a certain house; and if it shall prove that there are any claims against said Davenport which may be legal offsets against said notes, or any one of them, the said
211 Davenport shall pay any such amount or offset to said Le Claire—it is understood that the said Davenport in selling lots out of said tract of land has given the purchaser a bond for a deed—upon payment of the balance of the purchase-money, and the said Le Claire now agrees in all such cases that upon the balance of the purchase-money paid to him, the said Le Claire, he will make the holders or legal owners of said bonds a good title for the lot or lots described in said bonds. Nothing in this agreement shall be so construed as to bind the said Le Claire to any covenant or agreement herein contained on his part, unless the said Le Claire shall suceed in obtaining a title to the said unsold lots so reported by the said Davenport; and in case the said Le Claire shall not obtain such title, it is understood that he shall retain the list of notes now in his hands, and as fast as he collects the same the amount so collected shall be applied upon the said notes against the said A. H. Davenport; and in the mean time the said Le Claire shall hold the said notes so turned over to him by the said Davenport as collateral security for the notes so held by Le Claire against Davenport.

Executed and delivered in duplicate the day and year first above written.

(Signed) A. LE CLAIRE.
" A. H. DAVENPORT.

Witness: (Signed) JNO. P. COOK.

212 (Endorsed:) Exhibit "L." Memorandum of an agreement between Antoine Le Claire & Adrian H. Davenport.

(Indorsed:) Copy of a certified copy. A. Le Claire & A. H. Davenport. Lands in Le Claire's reserve. Art. of agreement. Mar. 27, '60.

213 No. 7.—*Plaintiff's exhibit marked K.*

EXHIBIT D.

This indenture, made this 7th day of May, A. D. 1857, between Adrian H. Davenport, of the city of Le Claire, of the first part, and Antoine
214 Le Claire, of the city of Davenport, of the second part, witnesseth that the said party of the first part, for the consideration of one dollar, the receipt whereof is hereby acknowledged, as well as for the better securing of five promissory notes hereinafter described, doth by these presents grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described tract of real estate lying and being situated in the county of Scott and State of Iowa, to wit: All that part of a piece of land lying within the present limits of the city of Le Claire, known as "Le Claire's reserve," that has not been by the said Le Claire conveyed heretofore, being the property conveyed by the party of the second part to the party of the first part, by his deed of bargain and sale bearing even date and executed simultaneously with these presents, to have and to hold said premises above described unto the said party of the second part, his heirs and assigns, forever.

Provided always, and these presents are upon this express condition, whereas said party of the first part has this day executed unto the party of the second part his certain five promissory notes, each for the payment of seven thousand dollars, the last four with interest from the first day of January, A. D. 1858; said notes being payable on the first days of January, A. D. 1858, 1859, 1860, 1861, and 1862, respectively, according to the tenor and effect of said notes, which said notes are given for purchase-money.

Now if the said Adrian H. Davenport, his executors or administrators, shall pay or cause to be paid to the said Antoine Le Claire the said notes when due, with the interest thereon, according to the tenor and effect thereof, then these presents shall be void; otherwise to be and remain in full force and virtue.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first before written.

(Signed) A. H. DAVENPORT. [SEAL.]

The words "Le Claire" and "executed simultaneously," on the first page, interlined before signing.

(Signed) JNO. W. THOMPSON.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the seventh day of May, A. D. 1857, before the undersigned, notary public in and for said county, personally came Adrian H. Davenport, to me personally known to be the identical person whose name is annexed to the foregoing indenture, and acknowledged the same to be his voluntary act and deed for the purposes therein set forth.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] (Signed) JNO. W. THOMPSON,
Notary Public.

Filed May 15, '61.

J. M. GIFFORD, *Clk*,
By L. BISHOP, *D'p'y.*

215 No. 8.

Copy.

EXHIBIT "I."

$7,000.

On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT J."

$7,000.

On the first day of January, A. D. 1862, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

216 (Indorsed:) Filed May 15, '61.

(Signed) J. M. GIFFORD, *Clk*,
By L. BISHOP, *D'p'y*.

217 *Copy.*

EXHIBIT F.

$7,000.

On the first day of January, A. D. 1858, I promised to pay to the order of Antoine Le Claire the sum of seven hundred dollars, value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT G."

$7,000.

On the first day of January, A. D. 1859, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent., value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT H."

$7,000

On the first day of January, A. D. 1860, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest

from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value receieved.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

All the foregoing notes are indorsed as follows: "Without recourse to me, pay to the order of James May.

(Signed) "A. LE CLAIRE."

218 No. 10.—*Plaintiff's exhibit marked "E."—Envelope.*

"EXHIBIT E."

{ Pittsburgh, Pa., } { Jun. 26, 1859. }

[3-ct. postage stamp.]

WILLIAM MCLEAN, Esq.,

Tallman, Powers & McLean,

Davenport,

Iowa.

219 No. 9.—*Plaintiff's exhibit marked "D."*

EXHIBIT "D."

PITTSBURGH, SUNDAY, *June* 26, 1859.

DEAR SIR: I arrived here Friday morning; saw Capt. May immediately, and thought that yesterday everything would [would] be fixed up, but on a meeting of the parties who were to furnish him the money yesterday, an abstract of his titles was required, which he could not furnish until it should be made out at Davenport. This was late yesterday afternoon, so I could not telegraph to you. He has written to King to get it made, and I am satisfied as soon as that is done the money will be ready. He is getting $15,000. I hope that you have had the notice put in the paper that I left with you; if not, change the day of sale so as to give 21 days' notice, and have it published without delay. I am tired of waiting on him; and that will bring him to time. I saw Springer Harbaugh; he says he will take up the Holdeman note when due, if required. The assignee of A. Irwin & Co. says the estate will pay over 50 cents on a dollar. Our claim is allowed. Harbaugh expects to be in Davenport before I get back. I shall probably see him to-morrow morning before I leave.

I shall see Capt. May this afternoon, but don't expect any money. If you see King, tell him to hurry up McCosh to make out the abstract, and say the same thing to McCosh. As soon as that is sent on the money will be ready here. Capt. May is very mad at me because I told him the property would be advertised; but I can't help that, it must go through, we have waited long enough. They call him very good in Pittsburgh, and say he has a good deal of property around here.

215 No. 8.

Copy.

EXHIBIT "I."

$7,000.

On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT J."

$7,000.

On the first day of January, A. D. 1862, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

216 (Indorsed:) Filed May 15, '61.

(Signed) J. M. GIFFORD, *Clk*,
By L. BISHOP, *Dp'y*.

217 *Copy.*

EXHIBIT F.

$7,000.

On the first day of January, A. D. 1858, I promised to pay to the order of Antoine Le Claire the sum of seven hundred dollars, value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT G."

$7,000.

On the first day of January, A. D. 1859, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent., value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

"EXHIBIT H."

$7,000

On the first day of January, A. D. 1860, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest

from the first day of January, A. D. 1858, at six per cent. for one year; after that ten per cent. Int. to be paid annually. Value receieved.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

Copy.

All the foregoing notes are indorsed as follows: "Without recourse to me, pay to the order of James May.

(Signed) "A. LE CLAIRE."

218 No. 10.—*Plaintiff's exhibit marked "E."—Envelope.*

"EXHIBIT E."

{ Pittsburgh, Pa., Jun. 26, 1859. }

[3-ct. postage stamp.]

WILLIAM MCLEAN, Esq.,

Tallman, Powers & McLean,

Davenport,

Iowa.

219 No. 9.—*Plaintiff's exhibit marked "D."*

EXHIBIT "D."

PITTSBURGH, SUNDAY, *June* 26, 1859.

DEAR SIR: I arrived here Friday morning; saw Capt. May immediately, and thought that yesterday everything would [would] be fixed up, but on a meeting of the parties who were to furnish him the money yesterday, an abstract of his titles was required, which he could not furnish until it should be made out at Davenport. This was late yesterday afternoon, so I could not telegraph to you. He has written to King to get it made, and I am satisfied as soon as that is done the money will be ready. He is getting $15,000. I hope that you have had the notice put in the paper that I left with you; if not, change the day of sale so as to give 21 days' notice, and have it published without delay. I am tired of waiting on him; and that will bring him to time. I saw Springer Harbaugh; he says he will take up the Holdeman note when due, if required. The assignee of A. Irwin & Co. says the estate will pay over 50 cents on a dollar. Our claim is allowed. Harbaugh expects to be in Davenport before I get back. I shall probably see him to-morrow morning before I leave.

I shall see Capt. May this afternoon, but don't expect any money. If you see King, tell him to hurry up McCosh to make out the abstract, and say the same thing to McCosh. As soon as that is sent on the money will be ready here. Capt. May is very mad at me because I told him the property would be advertised; but I can't help that, it must go through, we have waited long enough. They call him very good in Pittsburgh, and say he has a good deal of property around here.

I have seen several banks here who say they will send us their collections. D. S. True came here last night. If you see Crawford, the lawyer, say I saw his brother here who wishes to be remembered.

Please send the enclosed to my wife. I will write again at next stopping place.

Yours, (Signed) C. POWERS.

220 Addressed on the back of the envelope as follows, viz: William McLean, esq., Tallman, Powers & McLean, Davenport, Iowa.

221 No. 11.—*Plaintiff's exhibit marked "C."*

EXHIBIT "C."

State of Iowa, Scott County, Scott County district court.

GEO. L. DAVENPORT *vs.* [*vs.*] JAMES MAY. } Petition to quite title.

We consent that this cause be discontinued on the part of the complainant, and on behalf of respondent discontinue and withdraw his answer and cross-bill herein filed; entry to be made as of February term, A. D. 1861.

Defendant has leave to withdraw deposition from the files.

(Signed) CHAS. E. PUTNAM,
Attorney for Complainant.

(Signed) PARKER & EDWARDS,
Attorneys for Def't.

Endorsed on the back as follows: Geo. L. Davenport v. James May. Stipulation to discontinue. 5420.

222 No. 12.

"EXHIBIT B."

Copy.

APR. 14TH, 1860.

To Messrs. PARKER & EDWARDS:

I agree to sell the farm known as Rose Bank, formerly owned by Capt. James May, for the sum of twelve thousand dollars, cash. This proposition is not to be binding after thirty days from date, nor is it to prevent or interfere with my selling the said farm for the said amount to any other party offering the same within the said time.

(Signed) GEO. L. DAVENPORT.

This is a copy.

(Signed) GEO. M. PARKER.

222 No. 13.—*Plaintiff's exhibit marked "A."*

"EXHIBIT A."

Deposition of Charles Powers, to be found further on in this package.

223 No. 14.—*Deed, Cook & Sargent to A. Le Claire.*

Cook & Sargent to Antoine Le Claire.

Whereas Antoine Le Claire, of Scott County, Iowa, has made and executed certain notes, drafts, and acceptances for the accommodation and benifit of Cook & Sargent, of the same place, and is now liable to pay the same: now, therefore, know all men by these presents that we, Cook & Sargent, of the said county and State, for the consideration aforesaid, and in further consideration of the sum of one dollar to us in hand paid, the receipt whereof is hereby acknowledged, do grant, bargain, sell, convey, assign, and transfer unto the said Antoine Le Claire all our right, title, and interest in & to the banking-house of Cook, Sargent, Downey & Co., in Iowa City, Johnson County, Iowa, and in all the assetts of said banking-house or copartnership of Cook, Sargent, Downey & Co., whether real or personal, of whatever name and nature, belonging to the said firm of Cook, Sargent, Downey & Co., or in any wise thereto appertaining; to have and to hold the same unto the said Antoine Le Claire, his heirs and executors, administrators and assigns, for ever. And the said Cook & Sargent do for ourselves, our heirs, executors, and assigns, covenant and agree to and with the said Antoine Le Claire, his executors, administrators, and assigns, to warrant and defend the sale of the said property hereby made unto the said Antoine Le Claire, his executors, administrators, & assigns, against all and every person and persons whomsoever.

In witness we have hereunto signed our names this 22d day of December, A. D. 1859.

COOK & SARGENT.

224 STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this 22d day of December, A. D. 1859, before the undersigned, a notary public in & for the county and State aforesaid, personally appeared Ebenezer Cook, to me personally known to be the identical person who subscribed the names of Cook & Sargent to the above instrument, and is a member of said firm, and acknowledged that the same was the voluntary act and deed of the said firm, for the uses and purposes therein mentioned.

Witness my hand and notarial seal the year and day last above written.

[L. S.] J. B. LEAKE, *Notary Public.*

Recorded Dec'r 24, '59, at 2 o'clock p. m.

THOS. HUGHES, *Recorder J. C., Iowa.*

THE STATE OF IOWA, *County of Johnson, ss:*

I, Thomas M. Banbury, treasurer & recorder of said county, do hereby certify that the foregoing is a full, true, and complete copy & transcript of the record of a deed from Cook & Sargent to Antoine Le Claire, as full and complete as the same now remains of record in the record book of deeds of said county in my office, said deed being recorded in book No. 16 of deeds, page 638, of the records of said county.

Witness my hand this 18th day of October, 1864.

THOS. M. BANBURY,

Treasurer & Recorder of Johnson County, Iowa.

[5-ct. rev. stamp canc'd.]

225 (Indorsed:) Cook & Sargent to Antoine Le Claire. Certified copy of deed. Pl't'ff's exhibit.

Filed May 15, 1865.

WOODWARD, *Clerk.*

226 No. 15.—*Trust deed, May to Powers.*

(Indorsed in red ink:) For sale under this, see book V of deeds, p. 106, (546.)

This indenture, made on the first day of May, A. D. 1857, between James May, of Davenport, Scott County, Iowa, of the first part, and Charles Powers, of the same place, of the second part, witnesseth that the said party of the first part, for the consideration of the sum of six thousand four hundred and fifty dollars. the receipt whereof is hereby acknowledge, does by these presents grant, bargain, sell, & convey unto the said party of the second part the following described tract of real estate, lying and being situated in the county of Scott, & State
227 of Iowa, to wit, the southeast quarter of section number fourteen (14) in township seventy-eight (78) north, of range three east, of fifth principal meridian, excepting fifteen $\frac{1}{100}$ acres in west half of said section, and on the south side of Duck Creek, to have & to hold said premises above described unto the said [said] second party forever; and the said first party hereby covenants that said premises are free from any incumbrances, and that he has full right, power, and authority to convey the same, in trust, however, for the following uses and purposes, and no other, to wit: The said James May having this day executed unto Nicholas H. and Anthony T. Strippell a promissory note for the sum of six thousand five hundred & fifty dollars, payable on the first day of May, 1858, with interest at the rate of ten per cent. per annum, now, the better to secure the payment of said note according to the tenor & effect thereof, the said party of the first part hereby conveys the premises aforesaid to the said Charles Powers in trust for the security of said payment; and in case the said James May shall fail or refuse to pay said note when due, then, and in that case, the said Powers, as trustee, shall be authorized to advertise said property in some newspaper printed in the county of Scott aforesaid at least twenty days, and sell the
228 same at public auction, at the court-house door, in the city of Davenport, to the highest bidder for cash, for parcels and tracts of such size as the said Powers shall deem most advantageous for the said party of first part, or so much thereof as shall be necessary to satisfy the amount then due, with costs & expenses of making such sale, and account for & pay over the balance of the proceeds (if any there be) to the party of the first part, his heirs, assigns, or representatives, on demand; and he, the said Powers, will be fully authorized and empowered to execute a deed, in fee-simple, for the premises aforesaid, or so much thereof as he may sell to the purchaser thereof, which deed will be absolute, & prevent the said party of the first part, his heirs or assigns, from ever setting up any claim thereto, either in law or equity. The said party of the first part further stipulate, direct, and agree that, in the case of the death, incapacity, or refusal of the said Charles Powers to act, then & in that case the acting judge of the county court of Scott County is hereby authorized & requested to appoint a suitable person to act as trustee; and any person so appointed shall be clothed with all the power & authority to act that is herein given to the said Powers.

In testimony whereof the said parties of the first part has hereunto set his hand & seal the date first above written.

JAMES MAY. [S. S.]

229 STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the second day of May, A. D. 1857, before the undersigned, a justice of the peace in and for said county, personally appeared James May, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

Witness my hand the day and year above written.

R. D. CONGDON,
Justice of the Peace.

Filed for record May 4th, 1857, at 9 o'clock a. m. Recorded book L of mortgages, page 106.

J. M'COSH, *Rec'r.*

230 No. 16.

Copy.

Filed for record Nov. 3, '56, at 2½ o'clock p. m.

J. McCOSH, *Recorder.*

This indenture, made the first day of November, A. D. 1856, between James May, of Davenport, in the State of Iowa, of the first part, and George F. Kettell, of Poughkepsie, New York, of the second part, witnesseth that the said party of the first part for and in consideration of the sum of thousand one hundred & twenty-five dollars, the receipt of which is hereby acknowledged, does, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs & assigns, forever, the certain tract of real estate situated in the county of Scott, State of Iowa, to wit, a part of the southeast quarter of section number fourteen (14) in township number seventy-eight (78) north, of range three (3) east, of the fifth principle meridian, and described as follows: Situated on the east side of the Iowa City road, bounded north by lands of Mr. Gilruth, east by lands lately owned by Mr. Kincard, south by Duck Creek, west by the Iowa City road; being the premises upon which the party of the first part now lives, and containing seventy acres of land; to have & to hold the premises above described, with all the appurtenances thereto belonging, unto the said second party, and to his heirs & assigns, forever. Provided always, and these presents are upon this express condition, that if the said James May, his heirs, executors, or administrators, [or] shall pay or cause to be paid to the said George F. Kettell, his executors, administrators, or assigns, the sum of three thousand one hundred and twenty-five
231 dollars on the first day of November, 1857, with interest thereon at ten per cent. per annum after due, according to the tenor and effect of the promissory note of the said James May bearing even date with these presents, then these presents to be void; otherwise to be and remain in full force.

In witness whereof the said party of the first part has hereunto set his hand and seal the day and year first herein written.

JAMES MAY. [SEAL.]

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this third day of November, A. D. 1856, before the undersigned, justice of the peace in and for said county, came James May, to me personally known to be the identical person whose name is subscribed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act & deed.

Witness my hand & seal the day & year last above written.

R. D. CONGDON,
Justice of the Peace.

232 No. 17.—*Notice, May to Dessaint.*

Filed for record July 26th, 1859, at 2 o'clock p. m.

J. M'COSH, *Recorder,*
By C. H. ELDRIDGE, *Dep. Rec.*

James May notice to Lewis C. Dessaint.

To Lewis C. Dessaint, and all whom it may concern, & especially to any party desiring to take a conveyance from said L. C. Dessaint of the premises hereinafter described:

You and each of you are hereby notified not to take any conveyance, or for any consideration for a purchase, from Lewis C. Dessaint to the following property in Scott County, Iowa, viz., the southeast quarter of section fourteen, township seventy-eight, range three east, of 5th P. M., excepting fifteen $\frac{1}{100}$ acres in west half of said section, and on the south side of Duck Creek, being the premises conveyed to said Dessaint on the 20th day of July, 1859, by Charles Powers, under a pretended sale, under a deed of trust—said deed to Dessaint was recorded in the office of the recorder of said county July 21st, 1859—inasmuch as the said deed was procured by fraud and no title was conveyed thereby & the sale was illegal & the deed not made in pursuance of & under the sale. Any further particulars will be given on application to me.

JAMES MAY.

233 STATE OF IOWA, *Scott Co.:*

On this 26th day of July, 1859, before me, a notary public within & for said county, personally appeared James May, to me personally known to be the identical person whose name is subscribed to the foregoing instrument, & acknowledged the same to be his voluntary act & deed

Witness my hand & seal the day & year last above written.

[NOTARIAL SEAL.] ALFRED EDWARDS,
Notary Public, Scott Co., Iowa.

234 No. 18.—*Deed, Dessaint et ux. to E. Cook.*

Filed for record July 26th, 1859, at 2 o'clock p. m.

J. M'COSH, *Recorder,*
By C. H. ELDRIDGE, *Dep. Rec.*

This indenture, made this twenty-seventh day of July, A. D. 1859, between Lewis C. Dessaint and Marie C. Dessaint, his wife, of the county of Scott, and State of Iowa, parties of the first part, and Ebenezer Cook, of the city of Davenport, county of Scott, & State of Iowa

aforesaid, party of the second part, witnesseth that said parties of the first part, for & in consideration of the sum of seven thousand six hundred & ninety ($7,690) dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, sell, and quitclaim unto the said party of the second part, his heirs & assigns, forever, all their interest in the following described real estate situated in the county of Scott and State of Iowa aforesaid, to wit: The southeast quarter of section number fourteen (14) in township seventy-eight (78) north, of range three (3) east, of the fifth principal meredian, excepting fifteen $\frac{1}{100}$ acres in the west half of said section, and on the south side of Duck Creek.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

L. C. DESSAINT. [SEAL.]
MARIE C. DESSAINT. [SEAL.]

235 STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this twenty-seventh day of July, A. D. 1859, before me, a notary public within & for said county, personally appeared Louis C. Dessaint & Marie C. Dessaint, his wife, to me personally known to be the identical persons whose names are subscribed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act & deed. And the said Marie C. Dessaint, wife of the said Louis C. Dessaint, declared that she relinquished all her right of dower in the lands & tenements therein mentioned.

Witness my hand & notarial seal the day & year last above written.

{ WM. T. CLARK, NOTARIAL SEAL, SCOTT CO., IOWA. }

WM. T. CLARK,
Notary Public, Scott Co., Iowa.

236 No. 19.—*Deed, E. Cook et ux. to Geo. L. Davenport.*

Filed for record Dec 16, 1859, at 2 o'clock p. m.
JAMES McCOSH, *Recorder,*
By C. H. ELDRIDGE, *Dep'ty.*

This indenture, made this sixteenth day of December, A. D. 1859, between Ebenezer Cook and Clarissa C. Cook, his wife, of the city of Davenport and State of Iowa, parties of the first part, and Geo. L. Davenport, of the same place, party of the second part, witnesseth that the said parties of the first part, for the consideration of seven thousand six hundred & ninety ($7,690) dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, and convey unto the said party of the second part, his heirs & assigns, the following described tract of real estate lying & being situated in the county of Scott and State of Iowa, to wit, the southeast quarter of section number fourteen (14) in township seventy-eight (78) north, of range three (3) east, of the fifth principal meridan, excepting fifteen $\frac{1}{100}$ acres in west half of said section, and on the south side of Duck Creek; to have and to hold the premises above described with all the appurtenances thereto belonging, unto the said second party, and to his heirs & assigns, forever. The said Ebenezer Cook hereby covenanting for himself, his heirs, executors, and administrators, that the above-described premises are free from any incumberance; that he has full right, power, and authority to sell the same; and he will warrant and defend the title unto the said party of the second part, his heirs and assigns,
237 against the claims of all persons whomsoever lawfully claim-

ing the same. And the said Clarissa C. Cook, wife of the said Ebenezer Cook, hereby releases and relinquishes all her right of dower in & to the foregoing described premises.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the date first above written.

EBENEZER COOK. [L. S.]
CLARISSA C. COOK. [L. S.]

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the 16th day of December, A. D. 1859, before the undersigned, a notary public in & for said county, personally appeared Ebenezer Cook and Clarissa C. Cook, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, & acknowledged the instrument to be their voluntary act & deed; and the said Clarissa C. Cook acknowledged that she executed the same without fear or compulsion, and for the express purpose of relinquishing her right of dower in the premises therein conveyed.

Witnesseth my hand and notarial seal the day & year last above written.

{ JOHN C. DAVIE, NOTARIAL SEAL, SCOTT COUNTY, IOWA. }

JOHN C. DAVIE,
Notary Public.

238 No. 20.—*Powers' trustee's deed to Dessaint.*

This indenture, made and executed this 20th day of July, 1859, by and between Charles Powers, of Davenport, of the county of Scott, and State of Iowa, of the first part, and Lewis C. Dessaint, of the same place, of the second part, witnesseth that whereas James May, of Davenport aforesaid, by a certain deed of trust, bearing date the first day of May, A. D. 1857, for the consideration of six thousand five hundred and fifty dollars, did bargain, sell, and convey unto the said Charles Powers, as trustee, and to his heirs & assigns, forever, all of the following described parcel of land situated in the county of Scott, and State of Iowa, to wit, the southeast quarter of section No. (14) fourteen in township seventy-eight (78) north, of range three east, of fifth principal meridian, excepting fifteen $\frac{1}{100}$ in west half of said section and on the south side of Duck Creek, which deed was made subject to a proviso therein contained, that the same was made for the purpose of securing the payment of one certain promissory note executed by the said James May for the sum of six thousand five hundred & fifty dollars, bearing same date with said deed of trust and payable on the first day of May, 1858, with interest at ten per cent. per annum, with a special power in said deed of trust authorizing said Charles Powers, trustee as aforesaid, in case said James May should neglect to pay the promis-
239 sory note aforesaid, or any part thereof, or the interest when due, to advertise said property in any newspaper printed in said county of Scott, at least twenty days, and sell the same at public auction at the court-house door in the city of Davenport, to the highest bidder for cash, with power to execute to the purchaser a deed in fee-simple for the premises aforesaid, which deed will be absolute, & prevent said James May, party of the first, & his heirs, from setting up any claim thereto, either in law or equity; and whereas said deed of trust was duly recorded upon the records of said Scott County on the fourth day of May, A. D. 1857, as appears endorsed thereon, & in book L of mortgages, page 106, to which deed, and the record and the power therein,

reference is hereby made, and in which all the matters recited herein more fully and at large appear; and whereas default having been made in the payment of the money so secured by said deed of trust, the premises hereinbefore particularly described and set out were on Wednesday, the 20th day of July, A. D. 1859, at the hour of two o'clock in the afternoon, & at the court-house door in said city of Davenport, at public auction for cash, sold to Lewis C. Dessaint, the said party of the second part, for the sum of five thousand dollars, he being the highest bidder therefor, public notice having been previously given of said sale by an advertisement inserted in a newspaper printed & published in
240 said county of Scott, and entitled "Iowa State Democrat;" no one offering to bid on any part of said tract less than the whole, I offered the whole tract, which was sold as above.

Now, therefore, this indenture witnesseth that the said party of the first part, for & in consideration of the sum aforesaid, and to him in hand paid, the receipt whereof is hereby acknowledged by the said party of the second part, has granted, bargained, & sold, and, by these presents, does grant, bargain, sell, and convey, unto the said party of the second part, his heirs & assigns, forever, all & singular the parcel of land which is hereinbefore set out and described, with all the rights and privileges thereunto belonging & appertaining, as the same are described & conveyed in said deed of trust, & all the right, title, and interest of James May, whether in law or equity, as well as of the said first party in and to the premises before mentioned & described, and every part thereof as fully and to all intents & purposes as the said party of the first part has power and authority to give, grant, & sell the same by virtue of said deed of trust; to have & to hold the said premises and every part thereof, with all the appurtenances, to him, the said second party, and to his heirs and assigns, forever.

In witness whereof the said party of the first part has hereunto set his hand & seal the day & year first above written.

H. CHARLES POWERS, *Trustee.*

241 STATE OF IOWA, *County, ss:*

Be it remembered that on this 20th day of July, A. D. 1859, before the undersigned, a notary public in and for said county, personally appeared Charles Powers, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, & acknowledged the instrument to be his voluntary act & deed.

Witness my hand & notarial seal the day and year last above written.

{ R. D. CONGDON, NOTARIAL SEAL, SCOTT CO., IOWA. }

R. D. CONGDON,
Notary Public.

242 STATE OF IOWA, *Scott County, ss:*

George R. West, being duly sworn, says that he is one of the proprietors of the Iowa State Democrat, a newspaper published in said county, and that a notice, a printed copy of which is hereunto annexed, has been published in said paper (3) three weeks commencing on the 28th day of June last.

GEO. R. WEST.

Subscribed & sworn to before me this 20th day of July, 1859.

{ GEO. M. VAN HOSEN, NOTARIAL SEAL, SCOTT CO., IOWA. }

GEO. M. VAN HOSEN,
Notary Public, Scott Co., Iowa.

Trustee's sale.

Whereas, on the 1st day of May, A. D. 1857, James May, of Davenport, Scott County, Iowa, executed unto Charles Powers, as trustee, a certain deed of trust, conveying to said trustee the land in Scott County, Iowa, described as follows, to wit, the southeast quarter of section number fourteen (14) in township number seventy-eight (78) north, of range (3) east, of 5th principal meridan, excepting fifteen $\frac{1}{100}$ acres in west half of said section & on the south side of Duck Creek, which said conveyance was made by the said James May for the purpose of securing the payment of one certain promissory note & the interest thereon, signed by said James May, and dated the 1st day of May, A. D. 1857, and payable as follows, for the sum of six thousand five hundred & fifty dollars, payable on the 1st day of May, 1858,
243 with interest at ten per cent. per annum; and now, said promissary note having become due & payable, & the said James May having failed to pay the same, I, Charles Powers, trustee as aforesaid, do hereby give this public notice that by virtue of the power which is in me vested by said deed of trust, I will on Wednesday, the 20th day of July, A. D. 1859, at the hour of 2 o'clock in the afternoon of said day, at the court-house door in the city of Davenport, expose & offer for sale at public auction, to the highest bidder for cash, the parcel of land above described, or so much thereof as shall be sufficient to satisfy and pay the amount of said note, with interest thereon to the day of sale, together with all the costs & expenses attending said sale, costs of this notice, & trustee's fees.

Dated the 25th day of June, A. D. 1859.

CHARLES POWERS, *Trustee.*

JUNE 28.

Filed for record July 21st, 1859, at 1½ o'clock p. m.

J. McCOSH, *Recorder,*
By CH'S H. ELDRIDGE, *Dep. Rec.*

244 No. 21.—*Recorder's certificate to foregoing deeds, &c.*

STATE OF IOWA, SCOTT COUNTY, ss.,

Recorder's Office in and for said County:

I, James Thorington, recorder of said Scott County, State of Iowa, do hereby certify that I have compared the foregoing and annexed copies of deed of trust from James May to Charles Powers, filed for record May 4th, 1857, at 9 o'clock a. m. of said day, and recorded in book "L" of mortgages, at page 106, and following mortgage from James May to George T. Kettell, filed for record Nov'r 3d, 1856, at 2½ o'clock, and recorded in book "J" of mortgages, at page 301; and following deed from Louis C. Dessaint and Marie C. Dessaint to Ebenezer Cook, filed for record July 28, 1859, at 2 o'clock p. m., and recorded in book "V" of deeds, at page 576; and following deed from Ebenezer Cook & Clarissa C. Cook to Geo. L. Davenport, filed for record Dec. 16, 1859, at two o'clock p. m., and recorded in book "W" of deeds, at page 502; and following deed from Charles Powers to Louis C. Dessaint, filed for record July 21st, 1859, at 1½ o'clock p. m., & recorded in book "V" of deeds, at page 546 and following; and notice from James May to Louis C. Dessaint and others, filed for record July 26, 1859, at 2 o'clock p. m., and recorded in book "V" of deeds, at page 562 and following, with the originals thereof now of record in the recorder's office of Scott Co.,

Iowa, and the same are true copies of the originals as they appear of record in said recorder's office, & the whole thereof, including the various interlineations and additions made in red ink by the undersigned.

Given under my hand this 10th day of May, A. D. 1865,

245 (Signed) JAMES THORINGTON,
Recorder Scott Co., Iowa.

STATE OF IOWA, *Scott County, ss:*

I, M. D. Snyder, cl'k of dist. court Scott Co., Iowa, do hereby certify that James Thorington is now, and was at the time of the date of the above certificate made by him, recorder of said county, duly elected & qualified, and that his certificate thereto is in due form.

Given under my hand & seal of said court this 10th May, 1865.

[SEAL.] M. D. SNYDER, *Cl'k.*

[5-ct. U. S. rev. stamp.]

Fees of recorder, &c.

To copy of records, 4,032 words	$4 20
2 certificates	70
Stamp	5
Postage	18
	$5 13

246 (Indorsed:) No. 25, eq. James May vs. Le Claire, &c. Copies of deeds.

Filed May 15, '65.

WOODWARD, *Clerk.*

Fee for transcript paid by W. G. Woodward, $5 13.

J. THORINGTON, *Rec.*

247 No. 22.—*Deed, S. Crosson to Le Claire.*

Filed for record Dec. 3d, 1852, at 9 o'clock a. m.

H. PRICE, *Recorder.*

Sophia Crosson, deed to Antoine Le Claire.

This indenture, made the 11th day of February, A. D. 1852, between Sophia Crosson and William Crosson, her husband, of the city of Davenport, in the State of Iowa, of the first part, and Antoine Le Claire, of the same place, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of seven hundred dollars, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described tract of real estate lying and being situate in the county of Scott, and State of Iowa, to wit: All those certain lots, tracts, or parcels of land situate in said county, hereinafter described, as follows, to wit: Part of the east ½ of section No. eight (8) in township No. seventy-eight (78) north, of range No. five east, of the 5th P. M., particularly described as follows, to wit: Beginning on the bank of the Mississippi River where the north & south

centre line of said section strikes the said river at a bunch of sapling willows; thence north sixteen chains and sixty-one links to a post in the territorial road running through said section; thence along said territorial road north 35° east four chains and seventy-seven links to a post; thence north 21½° east four chains to a post; thence north 47° east three chains and eighty links to a post in the line of the land heretofore conveyed to Horatio G. Stone by Roswell H. Spencer; thence south along said line fourteen chains and seventy-nine links to a red-
248 oak stump four rods west of a maple on the bank of said river, which said stump is the southwest corner of the said Stone's land; thence east four rods to a maple tree on the bank of said river; thence southwardly with the meanders of said river to the place of beginning, containing twenty $\frac{60}{100}$ acres of land, excepting thereout, nevertheless, the following described tract of land heretofore conveyed to Ambrose C. Fulton, to wit: Beginning at a stake on the bank of the Mississippi River eight chains & ten links south from the southeast corner of the northwest quarter of said section eight, (8;) thence north sixteen chains & forty links to a stake in the territorial road running through said section; thence north 53¼° east along said road two chains and fifty-five links to a stake; thence south 30° east twelve chains and thirty-two links to the bank of said river; thence with the meanders of said river to the place of beginning, containing eight $\frac{75}{100}$ acres of land.

Also part of the fraction south of the slough & on the island in section No. eight (8) in the last above-described township & range, particularly described as follows, to wit: Commencing at meander post No. nine, (9;) thence north 87½° west two chains & twenty-seven links; thence south 89° west one chain & ninety-two links; thence south 63° west two chains & five links; thence south parallel with the section line across the island to the bank of the river; thence by the meanders of the river to the meander post No. ten, (10;) thence north along the section line to the place of beginning, containing eleven acres of land.

Also part of the fraction south of the slough and on the
249 island in section No. nine (9) in the same township and range, particularly described as follows, to wit: The said fraction to be divided by a north & south line running across the said island and parallel with the section line so as to leave an equal number of acres above and below said line in said fraction, and the said party of the second part to take that part of said fraction above and east of said dividing line, containing fifteen acres of land, reserving, however, to Ambrose C. Fulton, his heirs and assigns, the privilege of erecting a dam, &c. The said parties of the first part hereby mean to convey all their interest, right, and title which they may have in and to the foregoing sections as described in a deed of Lyman Cross & wife to Sophia Crosson, dated the 8th day of September, A. D. 1846, and recorded in the records, Scott County, in book F of deeds, pages 504 & 505, saving and excepting always one acre of land in section aforesaid heretofore conveyed by W. Crosson to Benjamin F. Bradbrook by deed bearing date the 12th day of April, A. D. 1847, and recorded in book E of deeds, page 314; to have and to hold said premises above described unto said party of the second part, his heirs & assigns, forever. And the said parties of the first part will forever warrant and defend the title against all persons whomsoever.

In testimony whereof the said parties of the first part have hereto set their hands and seals the date first above written.

SOPHIA CROSSON. [SEAL.]
WILLIAM CROSSON. [SEAL.]

250 STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the 12th day of February, A. D. 1852, before the undersigned, a notary public in and for said county, personally appeared Sophia Crosson and William Crosson, her husband, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed.

In testimony whereof I have hereto set my hand and affixed my notarial seal the day and year above written.

[L. S.] JOHN P. COOK, *Notary Public.*

STATE OF IOWA, *Scott County:*

I, John Collins, recorder of said county, certify that the above and foregoing is a true and correct copy of a deed from Sophia Crosson to Antoine Le Claire, as recorded in book "J" of deeds of the records of said county, at page 285 & following.

Davenport, Scott Co., Iowa, December 5, 1864.

JOHN COLLINS, *Recorder,*
By JNO. WEB. COLLINS, *Dep. Rec.*

251 No. 23.—*Assignment, Cook & Sargent et al. to Drury et al.*

Cook & Sargent, assignment to J. Wilson Drury et al.

This indenture, made this 23d day of January, A. D. 1861, between Ebenezer Cook, George B. Sargent, John P. Cook, George B. Dixwell, and John C. Davie, composing the partnership firms of Sargent & Dixwell, of Boston, & Cook & Sargent, of Davenport, parties of the first part, and J. Wilson Drury and George L. Davenport, parties of the second part, witnesseth that whereas said parties of the first part, both as partners and as individuals, are justly indebted to sundry persons in large sums of money and are unable to discharge the same with punctuality, and desire to make an equitable division of their property among their creditors; now, in consideration thereof, and one dollar to them in hand paid, have granted, bargained, sold, & conveyed, and by these presents do grant, bargain, sell, and convey, unto said parties of the second part all the estate, real, personal, & mixed, lands, tenements, and hereditaments, personal property, choses in action, in possession, or expectancy, either as partners in said firms or as individuals, situated and lying in the county of Scott or any other county of the State of Iowa, or any other county and State of the United States, or elsewhere; to have and to hold to the said parties of the second part, & their assigns, forever, for the uses and purposes following: That said parties of the second part shall take possession of said estate, real, personal, and mixed, and sell by proper deed or other lawful instrument, convey, collect, and convert into cash all said real and personal estate
252 in such a manner as the laws of Iowa require in relation to assignments, and apply the same pro rata as the said laws of Iowa direct & require, in payment of all of the debts due or to become due from the said firms or either of them, or the individual debts of the members thereof, including taxes and the necessary expenses of this trust; and after the payment of all said debts and the taxes and the expenses of executing this trust in the manner required by law, to return the surplus, if any there shall be, to the said grantors or their assigns.

The said grantors being now unable to furnish a complete shedule of their debts or assets, attach hereto a schedule in part, and will furnish

a further schedule to said grantees as soon as the same can be prepared, and file the same for record as required by law.

And the said trustees, or either of them, are hereby fully authorized and empowered to do and perform any act necessary to carry out the purposes of this trust as fully to all intents and purposes as the said parties of the first part might or could do were they personally present.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year above written.

EBENEZER COOK. [SEAL.]
GEO. B. SARGENT. [SEAL.]
JNO. P. COOK. [SEAL.]
JOHN C. DAVIE. [SEAL.]
GEO. BASIL DIXWELL, [SEAL.]
By his attorney in fact, JNO. P. COOK.

253 STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this 23d day of January, A. D. 1861, appeared before the undersigned, a notary public in and for said county, Ebenezer Cook, George B. Sargent, John P. Cook, & John C. Davie, & George B. Dixwell, by John P. Cook, his attorney in fact, said Ebenezer Cook, George B. Sargent, John P. Cook, & John C. Davie, and said John P. Cook, attorney in fact, being to me personally known to me to be the identical persons who executed the foregoing deed as grantors and as attorney in fact for said grantor, and acknowledged the same to be their voluntary act and deed, and said John P. Cook, attorney in fact for said George B. Dixwell, acknowledged the same to be the voluntary act & deed of said George B. Dixwell.

Witness my hand and notarial seal the day and year last above written.

[L. S.] JNO. L. COFFIN, *Notary Public.*

Know all men by these presents that we, George B. Sargent and George B. Dixwell, have made, constituted, & appointed John P. Cook, of Scott County, Iowa, our true and lawful attorney for us and in our names and in the names of each of us, to execute, acknowledge, and deliver a deed of general assignment of all the right, title, &
254 interest of us and of each of us in and to all the partnership property of Cook & Sargent, and Sargent & Dixwell, of every name and description, to such person or persons as he may think proper to secure the payment of the debts of said firms of Sargent & Dixwell & Cook & Sargent, in pursuance of and in compliance with the laws of Iowa, giving to our said attorney full power to act in the premises in the same manner as we might do were we personally present, and hereby ratifying all that said attorney may lawfully do in virtue hereof under the laws of Iowa.

In testimony whereof we have hereunto set our hands and seals this first day of December, 1860.

GEO. BASIL DIXWELL. [SEAL.]

STATE OF MASSACHUSETS, *Suffolk County, ss:*

Be it remembered that on this twentieth day of December, A. D. 1860, personally appeared before the undersigned, a commissioner of the State of Iowa within and for said county of Suffolk, George B. Dixwell, to me personally known as the identical person who executed the foregoing power of attorney, and acknowledged before me that the same

was so executed as his own voluntary act & deed, and requested me to certify the same.

In testimony whereof I have hereto set my hand and seal of office the day and year aforesaid.

FRANCIS B. HAYES, [SEAL.]
Commissioner of the State of Iowa within and for said County of Suffolk, in the Commonwealth of Massachusets.

Filed for record Jan. 23d, 1861, at 3¾ o'c. p. m.
J. McCOSH, *Recorder.*

255 No. 24.—*Mortgage, E. Cook et al. to A. Le Claire.*

Filed for record Dec. 16, 1859, at 9¾ o'clock a. m.
JAMES McCOSH, *Recorder,*
By CHAS. ELDRIDGE, *Dep. Rec.*

Cook, Ebenezer, et al., mortgage, to Antoine Le Claire.

This indenture, made this twenty-first day of August, A. D. one thousand eight hundred and fifty-eight, (1858,) between Ebenezer Cook and Clarissa C. Cook, his wife, George B. Sargent and Mary Sargent, his wife, John P. Cook & Eliza Cook, his wife, all of the county of Scott, State of Iowa, parties of the first part, and Antoine Le Claire, of the county & State aforesaid, party of the second part, witnesseth that the said parties of the first part, for the consideration of seventy thousand dollars, (70,000,) the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described tracts of real estate, lying and being situate in the city of Davenport, county of Scott, & State of Iowa, to wit: Part of lot seven (7) in block fifty-seven as the same is known, numbered, and designated on the recorded plat of the city of Davenport, the part of said lot hereby intended to be conveyed being particularly set out and described as follows; that is to say, beginning at the northwest corner of said lot seven (7) on Fourth street in said city of Davenport; thence running south along the west line of said lot seven (7) seventy-five (75) feet; thence east thirty (30) feet; thence north seventy-five (75) feet to said Fourth street; thence west along said Fourth street thirty (30) feet to the place of beginning. Also all that part of lots numbered six (6) and seven (7) in block number forty-five (45) in the said city of Davenport, which
256 is particularly described as follows, viz: Commencing on the west side of Brady street in said city ninety-two (92) feet south from the northeast corner of said lot number six, (6,) said commencement point being the southeast corner of a store formerly occupied by Benjamin Bar as a furniture store; thence running west one hundred & twenty-eight (128) feet; thence east one hundred & twenty-eight (128) feet to Brady street; thence south forty-two (42) feet to the place of beginning, together with all the buildings thereon and all privileges thereto appertaining. Also the east half of lot number six (6) in block number sixty-two, (62,) as the same is known, designated, and numbered on the plat of Le Claire's second addition to the city of Davenport; also the north half of lots number nine (9) and ten (10) in block number sixty-five (65) in the city of Davenport aforesaid. Also the west half of lot number four (4) in said block number sixty-five, (65,) city of Daven-

port aforesaid. Also (21) twenty-one feet off from the west side of lot number nine (9) in block number fifty-seven (57) in said city of Davenport, being a strip fronting on Fourth street twenty-one (21) feet and extending that width the whole length of said lot south to the alley. Also all that part of lot number ten (10) in said block number fifty-seven, (57,) bounded as follows, to wit: Beginning twenty (20) feet south from the northwest corner of said lot number ten, (10,) running thence south along Brady street sixty (60) feet; thence east across said lot sixty-four (64) feet; thence north sixty (60) feet; thence west to the place of beginning. Also all of lots numbers six (6) & seven (7) in block number seventy (70) in said city of Davenport. Also all of lot number
257 two (2) in block number forty-six (46) in said city of Davenport. Also all that part of lot number six (6) in block number forty (40) in said city of Davenport, to wit: Forty (40) feet in width on Main street & fifty-four (54) feet on Second street in said city. To have and to hold the premises above described, with all the appurtenances thereto belonging, unto the said second party & to his heirs and assigns, forever [forever]; provided always, & these presents are upon the express condition, that whereas the said Antoine Le Claire has accepted various sums for the accommodation of Cook & Sargent, & proposes to endorse and accept other and further sums for them with a view of enabling them to borrow money upon such acceptances; now, the express condition of this mortgage is, that if the said Cook & Sargent shall well and truly pay said acceptances as they respectively mature, and in all things hold and protect said Antoine Le Claire harmless in the premises, so that in no event the said Le Claire shall not have to pay any portion of said acceptances, then and in that case these presents, and everything herein contained, shall cease and become null & void; otherwise to be & remain in full force & effect.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the date first above written; the said George B. Sargent & Mary, his wife, by Ebenezer Cook, their attorney in fact, thereunto lawfully authorized by power of attorney for that purpose duly executed & recorded.

EBENEZER COOK. [SEAL.]
CLARISSA C. COOK. [SEAL.]
JNO. P. COOK. [SEAL.]
ELIZA A. COOK. [SEAL.]
GEORGE B. SARGENT, [SEAL.]
MARY SARGENT, [SEAL.]
By EBENEZER COOK,
Their Attorney in fact.

258 STATE OF IOWA, *Scott Connty, ss:*

Be it remembered that on the twenty-first day of August, A. D. 1858, before the undersigned, a notary public in and for said county, personally appeared Ebenezer Cook and Clarissa C. Cook, his wife, John P. Cook & Eliza Cook, his wife, and Ebenezer Cook, attorney in fact of George B. Sargent & Mary Sargent, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors & attorney in fact of the grantors, respectively and severally acknowledged the instrument to be their act & deed; and the said Clarissa C. Cook, wife of the said Ebenezer Cook, and the said Eliza Cook, wife of the said John P. Cook, severally acknowledged that they executed the same without fear or compulsion and for the

express purpose of relinquishing their respective rights of dower in the premises therein conveyed.

Witness my hand and notarial seal the day and year above written.

{ J. C. DAVIE. NOTARIAL SEAL. SCOTT CO., IOWA. }

JNO. C. DAVIE, *Notary Public.*

(On the margin of the foregoing mortgage the following appears:)

For value received I hereby release from the operation of this mortgage the east half of lot 6 in block 62, city of Davenport, & lots 6 & 7 in block 70, city of Davenport.

June 26, 1861.

ANT. LE CLAIRE,
By J. A. LE CLAIRE,
His Attorney in fact.

STATE OF IOWA, *Scott County, ss:*

I, John Collins, recorder of deeds in and for said county, do
259 hereby certify that the foregoing instruments; viz: "Deed from Sophia Crosson to Antoine Le Claire," recorded in book "J" of deeds, at pages 285 & 286; "Assignment of Cook & Sargent to J. Wilson Drury et al.," recorded in book "Y" of deeds, at pages 503, 504, & 508; and "Mortgage from E. & J. P. Cook et al. to Antoine Le Claire," recorded in book "G" of town lot mortgages, at pages 20 & 21, are true and correct copies of the records on the pages and books above set forth as the same appears on the records of Scott County, Iowa.

In testimony whereof I have hereto set my hand this eighth day of December, A. D. 1864.

JOHN COLLINS,
Recorder of Scott County, Iowa.

[5 ct. C. and revenue st.]

No. 25.—*Assignment, Cook et al. to Drury et al.*

Filed for record January 23, 1861, at 3¾ p. m.

J. McCOSH, *Recorder.*

Cook & Sargent et al., assignment to J. Wilson Drury et al.

This indenture, made this twenty-third day of January, A. D. 1861, between Ebenezer Cook, George B. Sargent, John P. Cook, George B. Dixwell, & John C. Davie, comprising the partnership firms of Sargent & Dixwell, of Boston, and Cook & Sargent, of Davenport, parties of the first part, and J. Wilson Drury & George L. Davenport, parties of the second part, witnesseth, that whereas said parties, &c., &c. (See page 2.)

STATE OF IOWA, *Scott County, ss:*

I, John Collins, recorder of deeds in and for said county, do hereby certify that the foregoing assignment from Cook & Sargent et al. to J. Wilson Drury et al. is a true and correct copy of the records of said county as the same appears on pages 528, 529, & 530 of book J, of town-lot deeds.

Davenport, Dec. 13, 1864.

JOHN COLLINS, *Recorder,*
By JNO. WEB. COLLINS, *Dep'ty.*

(Indorsed:) Filed May 15, '65.

WOODWARD, *Clerk.*

260 No. 26.—*Deed, Geo. L. Davenport to J. A. Le Claire, jr.*

George L. Davenport, quitclaim deed to J. A. Le Claire, ju'r.

This indenture, made and entered into this 20th day of January, A. D. 1862, by and between George L. Davenport & Sarah G. Davenport, his wife, of Davenport, county of Scott, and State of Iowa, of the first part, and Joseph A. Le Claire, junior, of Davenport, county of Scott, and State of Iowa, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of seven thousand dollars, the receipt of which is hereby acknowledged, have bargained and sold, and, by these presents, do grant, bargain, sell, and forever quitclaim, unto the said party of the second part, his heirs, executors, & assigns, all interest, claim, or demand on and to the following described real estate situated in the county of Scott and State of Iowa, to wit: The southeast q'r ($\frac{1}{4}$) of section No. fourteen (14) in township No. seventy-eight (78) north, of range three (3) east, of the fifth (5th) P. M., except fifteen (15) $\frac{1}{100}$ acres in west half ($\frac{1}{2}$) of said section, and on the south side of Duck Creek; to have and to hold the same, with all the appurtainances thereunto belonging, unto the said party of the second part, his heirs, executors, and assigns, forever.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written; and the said party of the first part hereby warrants the title as against any person or persons claiming by, from, or under him, said Davenport.

(Signed) GEO. L. DAVENPORT. [SEAL.]
SARAH G. DAVENPORT. [SEAL.]

STATE OF IOWA, *Scott C'ty:*

Be it remembered that on the 21st day of January, A. D. 1862, before the undersigned, a notary public in and for said county, in the State aforesaid, personally appeared Geo. L. Davenport and Sarah G. Davenport, his wife, to me personally known to be the identicle persons whose names are signed to the foregoing instrument of writing as grantors, and acknowledged that they executed the same freely and voluntarily for the uses and purposes therein expressed; and the said Sarah G. Davenport, wife of the said Geo. L. Davenport, acknowledged that she executed the said instrument for the purpose of relinquishing her & all her right of dower in the premises above named.

In testimony whereof I have hereto set my hand & affixed my notarial seal the day & year last above written, at my office, Davenport.

(Signed) CHARLES E. PULNA, *N. P.*

Filed for record Feb'y 1st, 1862, book 27, page 184.

261 No. 27.—*Deed, Dow et ux. to J. A. Le Claire, jr.*

Filed for record Feb. 3, 1862, book 27, page 192.

Geo. S. C. Dow's deed to J. A. Le Claire, ju'r.

This deed of bargain and sale, made and executed this 1st day of Feb'y, A. D. 1862, by and between Geo. S. C. Dow and Elizabeth C. Dow, of the county of Scott and State of Iowa, parties of the first part, and Joseph A. Le Claire, junior, of said county, of the second part, witnesseth that the said parties of the first part, for and in consideration of the sum of ten dollars to them in hand paid by the said party of the

second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and do, by these presents, grant, bargain, sell, convey, and confirm, unto the said party of the second part, and his heirs and assigns, forever, the certain tract or parcel of real estate situated in the county of Scott and State of Iowa, to wit, the southeast q'r of section fourteen, (14,) township No. seventy-eight, (78,) range No. three (3) east, of 5th P. M.; to have and to hold the premises above described, with all the appurtainances thereunto belonging, unto him, the said seccond part, and to his heirs and assigns, forever; and the said Elizabeth C. Dow, wife of the said Geo. S. C. Dow, hereby releases and relinquishes all her right of dower in and to the foregoing described premises.

In testimony whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein written.

(Signed) GEO. S. C. DOW. [SEAL.]
(Signed) ELIZABETH C. DOW. [SEAL.]

STATE OF IOWA, *Scott C'ty, ss:*

Be it remembered that on the 1st day of February, A. D. 1862, before the undersigned, a notary public in and for said county, personally appeared Geo. S. C. Dow & Elizabeth C. Dow, to me personally known to be the identicle persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed, and that they executed the same for the uses and purposes therein mentioned; and the said Elizabeth E. Dow, wife of the said G. S. C. Dow, acknowledges that she relinquishes all her right of dower in & to the premices above described.

Witness my hand and notarial seal the day and year last above written.

(Signed) J. SKIDDER, *N. P.*

Filed for record Feb'y 3rd, 1862, book 27, page 192.

262 RECORDER'S OFFICE, *Scott Co., Iowa:*

I hereby certify that the foregoing is a true and faithful transcript of the record of a deed from Geo. L. Davenport & wife to J. A. Le Claire, jr., as the same appears upon the records of said county, in book 27 of deeds, page 184, & also of a deed from Geo. S. C. Dow & wife to J. A. Le Claire, jr., as it appears in said book 27 of deeds, page 192.

Jan. 2, 1862.

A. F. MAST, *Recorder*,
By R. SMETHAM, *Deputy.*

[U. S. revenue stamp, 10 cts.: Jan. 2, '62, R. S.]

263 (Indorsed:) James May vs. A. Le Claire's ex'c'rs et al. Certified copies of deeds & records offered in evidence.

Filed Oct. 12, 1863.

W. G. WOODWARD,
Clerk C. C. U. S.

264 THE UNITED STATES OF AMERICA, *District of Iowa:*

To the marshal of said district, greeting:

In the name of the President of United States, we command you to summon R. D. Congdon, Geo. H. Parker, Joseph Motie, Thos. C. Eads, Adrian H. Davenport, Joseph A. Le Claire, George Wilson, Ira M. Gif-

ford, James Thorington, Willard Barrows, Lucas Bishop, Dennis Niven, Laurel Summers, Harvey Leonard, G. C. R. Mitchell, Snyder, I. W. Harrison, J. M. Bolling, J. Wilson Guiteau, A. C. Fulton, John L. Coffin, J. W. Thompson, James May, Geo. L. Davenport, & Louis C. Dessaint, if they be found in your bailiwick, to be and appear before Rufus Linderman, commissioner appointed by the court to take depositions and evidence, at his office in the city of Davenport, on the 29th day of February, A. D. 1864, at 9 o'clock a. m., then and there to give evidence in a suit pending in said court, wherein James May is plaintiff, and Geo. L. Davenport, Louis C. Dessaint, John P. Cook, Ebenezer Cook, Geo. B. Sargent, and Geo. L. Davenport, executor, & Marguerite Le Claire, executrix, of estate of Antoine Le Claire, deceased, defendant. Hereof fail not, and of this writ make legal service and due return.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 10th day of November, 1863, and in the eighty-seventh year of our independence.

[SEAL.] Attest: W. G. WOODWARD, *Clerk.*

(Indorsed:) No. 25, eq. James May vs. executors of A. Le Claire. Subpœna.

Served this subpœna this 23d day of Feb'y, A. D. 1864, on the within-named Geo. L. Davenport & Louis C. Dessaint, by reading the same to them in the city of Davenport, Scott Co., Iowa, they demanding their fees, viz., $2 50, which were paid.

(Sign'd) JOHN M. SYTER, *She'ff.*
By WM. POOL.

265 STATE OF IOWA, *Scott County, ss:*

I, William Pool, of Davenport, in said county of Scott, being duly sworn, do state that on the 23d day of February, 1864, at the city of Davenport, I served the annexed subpœna on Geo. L. Davenport and Louis C. Dessaint, by showing them the said original subpœna, with the seal theron, and the signature of the clerk thereto, and at the same time delivering to each of them a ticket containing the substance of said original subpœna, and paying to each of them the sum of one dollar and twenty-five cents as & for their fees as a witness in the cause in said subpœna named.

(Signed) WM. POOLE.

Sub. & sworn to before me by Wm. Pool this 23d day of February, 1864, as witness my hand and official seal.

{SEAL OF SCOTT COUNTY, STATE OF IOWA.} R. LINDERMAN, *County Judge.*

266 No. 28.

United States circuit court, district of Iowa.

JAMES MAY, COMPL'T,
vs.
JOHN P. COOK, EBENEZER COOK, LOUIS C. DESSAINT, Geo. B. Sargent, George L. Davenport, and George L. Davenport & Marguerite Le Claire, ex'c'r & executrix of Antoine Le Claire, dec'd, defendants.

To the above-named defendants:

Take notice that, pursuant to the order of the court authorizing the plaintiff to take the deposition of the defendants Geo. L. Davenport & Louis C. Dessaint, the said Geo. L. Davenport & Louis C. Dessaint, defendants herein, will be examined on behalf of the above-named complainant before Hon. Rufus Linderman, special commissioner or examiner, appointed by the court to take the examination of witnesses, at his office in the city of Davenport, Iowa; such examination to commence on the 29th day of February, A. D. 1864, at 9 o'clock a. m., and proceed as shall suit the convenience of the said examiner and special commissioner.

(Signed) D. T. MILLER,
Solicitor for Complainant.

Let the defendants Geo. L. Davenport and Louis C. Dessaint, witnesses on behalf of complainant, be examined before me at my office in the city of Davenport, county of Scott, and State of Iowa, on the
267 29th day of February, A. D. 1864, at 9 o'clock a. m. of that day, and let six days' notice be given to the defendants of such examination.

Dated Feb'y 22d, 1864,

(Signed) R. LINDERMAN,
Commissioner.

Rec'd Feb. 23d, 1864.

JNO. M. LYTER, *Sh'ff*,
By H. H. ANDRESSEN, *D'p'y.*

Served this notice this 23d day of Feb'y, 1864, on Jno. N. Rogers, by reading the same to him in the city of Davenport, Scott Co., Iowa, and by delivering to him a copy thereof.

(Signed) JNO. M. LYTER, *Sh'ff*,
By WM. POOL, *D'p'ty.*

Fees, 90 cts.

STATE OF IOWA, *Scott County, ss:*

I, William Pool, of Davenport, in said county, being duly sworn, do depose and say that on the 23d day of February, 1864, at the city of Davenport, in said county, I served the annexed notice and order upon J. N. Rogers, esq., by reading the same to him, and at the same time delivering to him a true copy of said notice and order.

(Signed) WM. POOL.

Subs. & sworn to before me by William Pool this 27th day of February, A. D. 1864.

R. LINDERMAN, *County Judge.*

268 *Answer & cross-bill.*

District court, Scott County.

GEORGE L. DAVENPORT }
vs.
JAMES MAY. }

The defendant, for an answer to the plff's petition, and for a cross-bill thereto, says that it is true that, at the time stated in the petition, he

was the owner of the premises therein described, and that at the time stated he executed, acknowledged, and delivered to Charles Powers a certain deed of trust, a copy of which deed is annexed to the said petition; but he denies that the amount of the consideration named in said petition & in said deed was the true consideration for the execution thereof. He says he is not at this time able to state the precise consideration for the same, but that the same was given for a corrupt and usurious loan of money by the payees of the note described in said deed, under a contract made with the said trustee, Charles Powers, as their agent, and that, as he verily believes, at least the sum of several hundred dollars of & in said notes was for such usury.

269 The defendant further answers & represents that heretofore, to wit, on the 8th day of March, 1859, & for long prior thereto, this defendant & Antoine Le Claire had various transactions to & with each other, & the said Antoine Le Claire had assumed to act as & for the agent of this defendant in selling real estate, and had received large sums of money to & for this defendant, & was indebted to him in a large sum of money, and that on the 8th day of March, 1859, the said Le Claire & this defendant had an accounting together of & concerning the same, and thereupon an agreement was made and entered into by & between them, & duly accepted by each of them, a copy of which is hereto annexed & marked Exhibit "A," & made a part hereof, whereby the said defendant agreed to cancel his claims against said Le Claire, and give him a clear deed for Rose Bank farm, being the same premises described in the said petition & deed of trust, & agreed to pay or release the incumbrances on said premises within twelve months from the date of said agreement; and the said Le Claire, in consideration of the premises, agreed to give up and release all claims against the defendant, &

270 to give a good and sufficient deed & transfer of all his right & title & interest & claim to all that part of his reserve at the head of the rapids which he, said Le Claire, sold to Capt. A. H. Davenport, of Le Claire, & to place said defendant in his place & stead, in the same manner as if he had made a deed to the def't, instead of to said Davenport, & also to transfer to said def't all the payments & securities that he had rec'd of said Davenport on said reserve as by the said written agreement will appear. And the said Le Claire then agreed to give the said def't all the information, facility, & power he could to enable the said defendant to carry out in good faith the conditions heretofore made with said Davenport in the premises.

And thereupon, for the purpose of carrying out the said agreement, this defendant executed a deed to said Antoine Le Claire, of the said premises known as the Rose Bank farm, & the same was, on or about the 10th day of March, 1859, deposited, with the consent of the said Antoine Le Claire, with Cook & Sargent, to be kept by them, & to be delivered and take effect as an executed instrument when the terms of the said agreement were complied with; and on the same day, to

271 wit, the 10th day of March, 1859, the said Antoine Le Claire deposited with the said Cook & Sargent five promissory notes, of seven thousand dollars each, executed by A. H. Davenport, dated May 7, 1857, payable respectively on the first days of Jan'y, A. D. 1858, 1859, 1860, 1861, & 1862, on one of which is endorsed a payment of three hundred & fifty dollars, which said notes the said Le Claire then endorsed to the order of this defendant; and at the same time the said Le Claire deposited with said Cook & Sargent certain promissory notes against sundry persons particularly described in a receipt of said Le Claire to said Davenport, which latter notes were given by said Davenport as

collateral security for the payment of the said notes so executed by said Davenport. This def't annexes a list of said last-mentioned notes. And at the time last stated the said Le Claire deposited with the said Cook & Sargent a mortgage, given by said Davenport to him to secure said five notes of $7,000 each, which said five notes of $7,000 each & said mortgage (the other notes being collateral thereto) were so deposited with said Cook & Sargent for the purpose of carring out the stipulations & agreements made between the def't & said Le Claire, as aforesaid,
and were to be delivered up to this defendant when he should pay
272 & release all mortgages, judgments, & other liens upon said Rose Bank farm & premises, & execute to said Le Claire a good & sufficient deed therefor, in accordance with the said stipulations, provided the same was done within one year from the 8th March, 1859. And thereupon, with the agreement & consent of said Le Claire, this def't, & Cook & Sargent, the said Cook & Sargent executed to this def't a receipt & agreement, of which a copy is hereto annexed & marked Exhibit B, & made a part hereof.

That shortly after the execution of said papers this defendant commenced to make arrangements to pay off & release the said incumbrances upon the said Rose Bank farm; that this def't had several interviews with said Ch's Powers, who at that time represented the said deeds of trust and the notes therein described, and stated to him the contract & agreement he had made with said Le Claire; and the said Charles Powers then induced this def't to believe that he would assist him in raising money to pay off the incumbrances on said farm, and that he would not enforce the said deed of trust; that some time after said 10th
273 March this defendant went to Pittsburgh for the purpose of raising money to pay off said incumbrances; that after he left Davenport, the said Antoine Le Claire, Cook & Sargent, John P. Cook, Ebenezer Cook, Louis C. Dessaint, Joseph A. Le Claire, & George L. Davenport combined & confederated together, the said John P. Cook acting as the attorney & agent of said Antoine Le Claire, and all of said other parties acting as the friends & advisers of said Antoine Le Claire, for the purpose of preventing the said defendant from raising money to pay off said incumbrances and for the purpose of [purpose of] procuring the said deed of trust to be foreclosed, and a sale of the premises described therein to be made, under the powers therein contained, & for preventing bona-fide bidders from bidding or attending at said sale, and for the purpose of preventing the said defendant from paying off the said incumbrances as he was required to do by said contract with Le Claire, & preventing him from executing a clear title to said premises, & for the purpose of preventing him from performing the conditions to be kept & performed by him under his said contract with said Le Claire, & rendering a performance thereof impossible; and, as he is advised & believes, thereupon the said John P. Cook, as the attorney of said Le Claire, acting by & with the advice & co-operation of said Antoine & Jo-
274 seph A. Le Claire, Ebenezer Cook, Dessaint, & the complainant, urged & requested the said Charles Powers to advertise said property for sale under the powers contained in said deed of trust, and at the time said def't was away from Davenport, which fact was well known to the said parties; that this def't relied upon the assurances given him by said Ch's Powers that no foreclosure or sale should be made of said premises; that some time about the 25th of June, 1859, this def't met said Powers in Pittsburg, and said Charles Powers then at first desired this defendant to pay up the said deed of trust, but subsequently gave this defendant further assurances that he would not press

the foreclosure & sale under said deed of trust. And this defendant was then engaged in raising a sum of money to pay off said incumbrances, of which fact the said Charles Powers was then duly informed, and that this def't relied upon such assurances given by said Powers; that this defendant finally succeeded in raising the sum of $9,000 to pay off said deed of trust & the other incumbrances, & returned to Davenport on or about the 19th day of July, 1859, about one days before the said sale; that this defendant was, when in Pittsburgh, making negotiations
275 to raise a much larger sum of money than $9,000, but had not yet consummated his plans for that purpose at the time of his return to Davenport, as last aforesaid.

That, as he is advised & believes, the said John P. Cook, acting as the att'y & agent & friend of said Antoine Le Claire, had, in connexion with the other parties herein named as confederators, urged the said Charles Powers to advertise the said premises for sale under said deed of trust, and this defendant charges, upon his information & belief, that at the time said Powers went to Pittsburg as aforesaid, & prior thereto, he had, either by himself or as a member of the firm of Tallman & Powers, or Tallman, Powers & McClean, advanced to the payees & owners of said note in said deed of trust described over the sum of $700; that the said Tallman, Powers & McClean, or the said Ch's Powers, a member of that firm, had the charge & management of said deed of trust, & were entitled to the care & management of the moneys to be paid thereon as agent or agents for the owners thereof; & that the said Ch's Powers & the said Tallman, Powers & McClean were then in a want of money, which fact was well known to the said confederators.

276 That in fact the said Ch's Powers, or some one acting under him [him,] had caused the said property to be advertised for sale before his return from New York, and this def't charges that the same was so advertised for sale at the time this def't saw said Powers at Pittsburgh as aforesaid, & that said Powers did not inform this defendant of that fact.

And this defendant charges, upon information from the oath of said Powers, that the said John P. Cook, a few days before the said sale, called upon the said Powers, and desired & urged said Powers not to have any bidders at the said sale; that there would be bidders there; that the said Louis C. Dessaint would bid on the said property; that in case said Dessaint bid he, said Cook, would see that the money was paid on such bid; that it was unnecessary for said Powers to have any person to bid against said Dessaint or himself, & that if said Dessaint or himself bid off said premises on such sale that he would see that the amount of the claim was paid in full to said Powers; that there
277 was at that time a mortgage on said premises prior to the said deed of trust, on which there was claimed to be due $3,300; that it was agreed by & between said Powers & John P. Cook that in case of a sale the said John P. Cook was to see that the said prior incumbrance was to be taken up & the money paid to said Powers, who represented the said prior incumbrance, or some satisfactory arrangement made with reference thereto.

And this defendant further says that on his return from the East the day before the sale under said deed of trust he brought with him a party who had $9,000 in drafts, & with authority to draw drafts for the purpose of paying off said deed of trust & said mortgage.

That this defendant, on the day before the said sale, called upon Antoine Le Claire, and informed him that he was prepared to take up the incumbrances on said farm, and to pay up the said deed of trust & mortgage, as he had the money requisite, & desired & offered to give abun-

dant securities to said Le Claire to indemnify him against the judgments on said farm, so that he could take up the said notes of said A. H. Davenport, which said Le Claire refused to do, but referred said def't to John P. Cook, one of the firm of Cook & Sargent, as his agent, who had charge of the matter, with whom alone he, def't, could make any arrangements.

278 That on the day of the said sale this defendant was negotiating with said Powers as to the payment of the said trust deed & mortgage; and the said Charles Powers then represented that he was anxious to have the matter arranged, & gave this defendant to understand that no sale would take place, and that his said drafts would be satisfactory & would be taken as money, & gave the def't to understand that he would assist him in raising money on his (def't's) securities in order to release the other incumbrances (by judgment) on said farm; and while they were then carrying on their negotiations to that effect, the said Powers rec'd a note which deponent has since learned from the deposition of said Powers was written by John P. Cook, cautioning the said Powers not to take any doubtful drafts in payment of said deed of trust & mortgage; and thereupon, by reason of the suggestions, expressions, & intimations of said Powers, the def't was induced to believe and did believe that the said Powers was acting in good faith with him and did not intend to make a sale under said deed of trust, and immediately upon the receipt of the said note from John P. Cook, & while they were negotiating as aforesaid, the said Powers stated to this defendant that he must

279 go to the court-house as he had other sales to make; and the said Powers thereupon left, and as he is informed by the oath of said Charles Powers, he went immediately to see John P. Cook, & rode with him to the court-house where the sale was made.

And this defendant charges, upon information as aforesaid, that John P. Cook was aware of the object of the def't in making said negotiations & of his having the said drafts for the purposes aforesaid, & that he, said Cook, wrote said note to said Powers with the intention of breaking off said negotiations, & of having a sale made before this defendant could be informed thereof, & for the purpose of preventing the completion of said contract on his part.

And this defendant alleges that by reason of such inducements & his need of money, the said Charles Powers was prevailed upon to advertise said property, or have the same advertised, & to make said sale without the knowledge of this defendant, and after he had induced this defendant to believe that no sale would take place, & after he had represented that he was going to the court-house for the purpose of making other sales.

Wherefore this defendant charges that the said Powers deceived this defendant in the premises, & combined with the said John P. Cook & his confederates for that purpose.

280 And this defendant says that in consequence of the deceit practiced upon him as aforesaid, & the assurances made to him & upon which he relied, he did not go to the court-house to attend the sale.

And this defendant says he is informed from the oath of said Powers, and believes that the said John P. Cook had frequent conversations with said Powers with reference to the said matters, & informed said Powers of the said contracts & receipt, & the agreements between said def't & said Antoine Le Claire, & informed said Powers that Louis C. Dessaint would purchase the property & bid at the sale, and that he, Cook, would see that the money was paid; that said Cook represented to said Powers that said Le Claire was not indebted to said defendant; that

the said Le Claire had made an agreement with this def't, which in the opinion of Mr. Le Claire's friends was a great outrage and wrong, & that he as well as other friends of Mr. Le Claire, and he as his attorney, considered it as his & their duty to protect Mr. Le Claire, and that he & they for that reason desired the property to go out of this def't's hands, and the reason for the course he took was to protect Mr. Le Claire from said contract & prevent said def't from being able to comply with his said contract.

281 And, as this defendant is advised and believes, the said notice of sale was not made out or published by said Powers, but was made out after said Powers had gone east, as aforesaid, under the direction of the said Antoine Le Claire, or his attorney, or one of his said friends & advisers & confederates.

And this defendant alleges that the said sale under said deed of trust did not take place at the hour of two o'clock on the p. m. of the day of sale, being the time fixed for the same by the notice of sale, & did not take place until long after such hour.

And this defendant says he has been informed by the oath of said Powers, & believes & so charges, that the said John P. Cook, Joseph A. Le Claire, George L. Davenport, Louis C. Dessaint, & others were present at said sale, & that the property was offered for sale subject to the prior incumbrance of $3,300; that it would be offered separately or in parcels; that the sale would be for cash; that several persons, among them John P. Cook, made bids on such sale; & that at such sale the whole of said premises was struck off to Louis C. Dessaint for

282 the sum of $5,000, he being the highest bidder therefor.

And this defendant charges that the bids made by said Dessaint & said Cook & all other bids by the persons herein charged as confederates were fictitious & not bona fide, & not made for the purpose of purchasing or becoming possessed of said premises, but only for the purpose of preventing this defendant from fulfilling his said contract.

That, as this def't is advised & believes, the said Antoine & Jos. A. Le Claire, the pl'ff L. C. Dessaint, & the said John P. Cook & Ebenezer Cook and Cook & Sargent, endeavored & combined to prevent bidders in good faith from purchasing said property at said sale, & to prevent this def't & his friends from being there.

And this defendant charges that the said sale to said Dessaint for $5,000 was made in pursuance of the agreement and understanding made between said John P. Cook & said Powers, that if said Dessaint bid in said property at said sale for less than the amount of the claim, he, said Cook, would see that the full amount of the claim was paid, no matter what might be the amount of the bid.

And this defendant charges that the amount then claimed at the time of said sale by the said Ch's Powers to be due on said deed of trust,

283 including the sum of $89 for trustee's fees & expenses, was the sum of $7,740.

And your petitioner charges, upon information derived from the oath of said Charles Powers, who has since deceased, that it was the agreement & understanding by and between said John P. Cook & said Ch's Powers, that in case said property was bid off for less than the amount of the claim, that he, said Cook, should see that the full amount of the said claim was paid, and that the security, to wit, the note & deed of trust, was to be transferred and the amount thereof paid in full, and that after the sale the said note, being endorsed in blank, was, with the said deed of trust, delivered to John P. Cook.

And this defendant charges that the object in bidding in the property

at an amount less than the amount really to be paid & then claimed by said Powers to be due, was to hold a large indebtedness against this defendant.

And this defendant says that the real consideration of said deed to said Dessaint was the said sum of $7,740 paid to said Powers as hereinafter stated; and that the said deed to said Dessaint was not
284 made in pursuance of the bid made by him of $5,000, but was in fact a private sale and that the said deed was not made in pursuance of or under the powers contained in said deed of trust, but was executed upon a private sale, & for a consideration other than that for which the same was sold by public sale, & upon an illegal agreement made before the sale, and an agreement made to prevent bona-fide bidders from bidding at said sale.

And this defendant says that the sum of $7,740 was, as he is informed by the oath of Ch's Powers, & believes, paid to said Powers as the real consideration of said deed on the day after the said sale as follows: $1,500, by a check on Tallman, Powers & McClean; $2,000, in currency; $3,940, by a memorandum check of Cook & Sargent on themselves; that said John P. Cook paid over said money & took the deed to said Dessaint; and this defendant charges upon his belief that the said check on Tallman, Powers & McClean was in fact their own check, & was then held by Cook & Sargent, & that said Ch's Powers was in part induced to make said sale as herein stated, for the reason that he feared if he did
285 not, said Cook & Sargent would not hold the said check, but would protest the same.

And this defendant further says that as he is informed by the oath of the said Powers & believes that a few days after the sale, the said John P. Cook proposed to the said Powers to take up the said mortgage on said premises, and offered said Powers a note made by Cook & Sargent, endorsed by Antoine Le Claire, Louis C. Dessaint, G. C. R. Mitchell, & George L. Davenport, or asked if such a note would be acceptable; that afterwards and on the 28th day of July, 1859, a note was executed of that date, signed by John P. Cook & endorsed by Ebenezer Cook & Antoine Le Claire, which note was delivered on the 16th August, A. D. 1859, to said Powers, and the said mortgage was assigned & the note endorsed to said John P. Cook by the holder thereof; which said assignment of said mortgage was made in pursuance of the plan & agreement made before said sale as aforesaid.

That at the November term (1859) of the district court of Scott Co., the said John P. Cook commenced an action against this defendant upon the note secured by the said prior mortgage to obtain a personal judgment against this defendant for the purpose, as this defendant
286 alleges, of complicating the title to said property & obtaining a judgment & rendering the completion of the contract by this def't on his part still more impossible; & thereupon this def't applied to have the case removed for trial to the United States district court, whereupon the said John P. Cook by his att'ys applied to have the cause dismissed, to which this def't objected, & thereupon the cause was dismissed, from which order this defendant appealed to the Supreme Court, pending which appeal the said John P. Cook commenced an action on said note in the United States circuit court for the State of Illinois.

And this defendant alleges, upon his information & belief, that no part of the consideration for the execution of the deed to him by said Powers was ever paid by Louis C. Dessaint, that his name was merely used as a shield for the benefit of Antoine Le Claire, & that he never had any interest in said premises; that the said Dessaint, after the deed to him

was executed, for the purpose of claiming that he was a bona-fide purchaser, pretended that he was about to make improvements on said premises, and that this def't caused a notice to be served upon him
287 not to make any improvements thereon, and that the sale was fraudulent & illegal; whereupon the said Dessaint made the said deed of the said premises to Ebenezer Cook.

And this def't alleges, upon his best belief, that the said Dessaint did not receive any consideration from the said E. Cook for his said conveyance to him; that the said Ebenezer Cook conveyed said premises to the plaintiff on the 16 day of December, 1859, and the def't shows that the said John P. & Ebenezer Cook were members of the firm of Cook & Sargent; that said Cook & Sargent suspended business on the 16th day of December, 1859, and the defendant alleges that said firm were then deeply embarassed, if not insolvent, and that, as he verily believes, the said Ebenezer Cook had no real interest in said property & was only nominally the owner thereof, & that he never paid any value therefor; and the defendant alleges on his belief that the said Ebenezer Cook executed said conveyance of said premises to the said plaintiff to keep the same from being seized upon by legal process as his property, when it was his intention to have the same held in fact for Antoine Le Claire or his benefit.

288 And this defendant alleges that the said sale to said Dessaint was in fact made for the benefit of & on account of the said Antoine LeClaire; that the money paid therefor was either in fact the money of said Antoine Le Claire, or paid for him, & on his account, by Cook & Sargent; that, as def't has been informed & believes, the said Cook & Sargent were at the time of the said sale indebted to Antoine Le Claire, & said Le Claire was liable for them to a large amount, and that if said Cook, Sargent, or any other parties, advanced the money to pay said sum of $7,740, and also the sum of $3,300, to take up said prior mortgage, they or he advanced the sum for & on account of the said Le Claire & not on their own account, and that he or they are entitled to a credit with said Le Claire therefor, if the same was not in fact furnished by said Le Claire at the time of the purchase or been refunded since by him to the party so advancing it.

That the said John P. Cook sometimes pretends that he is acting for said Dessaint, and sometimes as attorney and as a friend to said Le Claire; that said def't has had several interviews with said Le Claire with reference to the said farm & the deed of trust, & with reference to
289 the said contract of 8th March, and said Le Claire has always referred this defendant to said John P. Cook as his attorney in the premises.

That, as this def't believes & charges, the said plaintiff did not pay said Ebenezer Cook any consideration for the execution to him of the deed of said premises, but after the suspension of said Cook & Sargent he voluntarily took a conveyance of said premises, acting as a friend of said Le Claire, for the purpose of assisting him in carrying out the plans aforesaid, to prevent this defendant from completing his said contract.

And this defendant alleges, upon information & belief, that the said Geo. L. Davenport, Cook & Sargent, John P. Cook, Ebenezer Cook, Louis C. Dessaint, & Joseph A. Le Claire aided & abetted the said Le Claire in the premises, & were familiar with all the facts herein charged against them & him, and that the object in procuring said sale to be made, & the several conveyances thereafter, was to procure the said Rose Bank farm for said Antoine Le Claire, and to prevent the said de-

fendant from being present or knowing of said sale, and to deceive him as to the time thereof, and to prevent him from giving a clear title to the same, & prevent him complying with his said contract.

290 And the defendant further says that, as he is informed by the oath of Charles Powers & believes, on the morning after said sale, before the said money was paid to said Powers by John P. Cook, as aforesaid, the said Powers called upon the said Dessaint & urged said Dessaint to give up his said bid; and "stated to said Dessaint that he was very desirous that some arrangement might be made by which Capt. May (the def't) might retain the property," (Rose Bank farm,) which said Dessaint refused to do; and on said morning the said Powers informed this def't that the sale did not amount to anything, & informed this defendant that he would take the $9,000, & discharge the said mortgage & deed of trust, and that he would take up the judgments which were liens on the said premises, & would guarantee Cook & Sargent & Antoine Le Claire against the bid of said Dessaint, & thereupon the said Powers & this def't made an agreement to that effect; and this def't thereupon, & before the said deed was delivered, offered said John P. Cook to take up & release said incumbrances on said farm, & comply with the agreements on his part to be kept under his said contract with said Le Claire & under the said receipt, and offered to indemnify the said Cook & Sargent & said Antoine Le Claire against the said bid of said Dessaint, & thereupon the said John P. Cook, as

291 a member of the firm of Cook & Sargent, and as the attorney of said Antoine Le Claire, refused, upon the demand of this defendant, to comply with the terms of the receipt given by the said Cook & Sargent, & deliver up the said notes of A. H. Davenport & the said mortgage, & the said collaterals thereto, upon the ground that the said Dessaint had a claim upon said property; and this defendant alleges that the said Dessaint had not at that time complied with the terms of the said sale, and had not paid the amount of the said purchase, or any part thereof, on the day of the sale, as by the terms of the said sale he was required to do, & was not entitled to a deed, & could not require the said trustee to execute the same to him; and this defendant alleges that the said Lewis C. Dessaint, who still represented said Le Claire in refusing to surrender his bid, & the said John P. Cook, in refusing to surrender said notes of A. H. Davenport, & comply with the terms of said receipt, were acting in combination with said Le Claire, confederating with him for the purpose of preventing this defendant from completing his said contract.

And this defendant further says that he has been informed & believes, that since the said sale the said A. H. Davenport, & other parties,

292 whose notes were deposited with said Cook & Sargent, as aforesaid, offered said Cook & Sargent & John P. Cook to pay part of said notes, there being then a large amount due on said notes, and the said Cook & Sargent & John P. Cook then advised said A. H. Davenport & said other parties not to pay the same, but to make a written tender in writing of their offer to pay, & he & they would refuse to accept the said offer; which tender was made & refused.

And this defendant says that the reason, as he believes, of such advise, was to prevent any money being paid on said notes to which he, this def't, might be entitled, & which would or might be applicable to the payment of said incumbrances, & for the further purpose of rendering the completion by this defendant of said contract still further impossible.

And this def't further shows that after the execution of the contract

of March the 8th, this def't allowed the said Antoine Le Claire to take immediate possession of the said Rose Bank farm, & the said Le Claire, as def't is informed & believes, by himself & Jos. A. Le Claire, has ever since been in the possession thereof.

293 And this defendant claims & insists that the said deed of trust was & is absolutely void, for the reason that the same was founded upon an illegal & usurious agreement; that the said sale, under the said deed of trust to said Dessaint, was & is absolutely void, for the reason that the same did not take place at the hour stated in the notice of sale required to be given by the said deed of trust, because the same was made fraudulently for the purpose of hindering and preventing the def't from completing & complying with his said contract with said Antoine Le Claire, as aforesaid, & because the said sale was not made in good faith, & because the said Antoine Le Claire, & his confederates, as aforesaid, conspired to prevent bona-fide bidders attending or bidding at such sale, and prevented completion thereat, and because an illegal agreement was made that the said property should be purchased at less than the amount claimed to be due on said claim, and the purchaser still to pay $2,740 more than his bid, as a consideration for his deed, for the purpose of defrauding & injuring the def't, and because said bid was made for the benefit of said Antoine Le Claire.

And this def't claims & insists that the said deed from Ch's Powers, trustee, to said Dessaint was absolutely void, & conferred no title upon said Dessaint for the same reasons, and, because before the said

294 Dessaint complied with the terms of the pretended sale to him, and while he was in default, & while he in fact represented the said Antoine Le Claire, this defendant offered to pay up the incumbrances on said farm as he was required to do by his said [said] contract.

And this def't claims that for the said reasons the said deed from L. C. Dessaint to Ebenezer Cook, and the deed from said Ebenezer Cook to Geo. L. Davenport, is & was absolutely void; & because the said Davenport & Cook never paid or rec'd any consideration therefor, but were acting in connexion with said Le Claire in respect to the matters herein charged, and had full knowledge of each of the matters herein charged.

And this def't says he denies, upon information & belief, that the said Ebenezer Cook paid to said Dessaint the sum of $7,690, or any part thereof, as the consideration of said deed; but if said Cook paid said Dessaint the sum of $250, or any other sum, it was to pay him for his services to & for said Antoine Le Claire, & in his combination aforesaid, & was p'd for & on account of said Le Claire.

And this def't denies, upon his information & belief, that the said Geo. L. Davenport paid said Ebenezer Cook the sum of $7,690,

295 or any other sum, as the consideration of the deed to him from said Cook; but if any sum was paid, it was paid as hereinbefore stated.

And this def't denies that the pl'ff is the owner of said premises, but says that if by said sale & said deeds any title was conveyed to the pl'ff, he holds the same to & for the use of said Antoine Le Claire.

This def't admits that he caused the notice mentioned in the petition to be filed for record, & he charges that the said Ebenezer Cook & the pl'ff had actual notice of the same, & of the rights of the def't as herein set forth at the time of the conveyances to them respectively as aforesaid.

And this def't further shows that he is willing, & always has been, to perform his said contract on his part, and that it is his intention to file

a bill in the district court of the U. S., making the parties herein named def'ts therein, to compel a specific performance of the said contract, & praying that the said sale & the said deeds subsequent thereto may be set aside, and that the notes deposited with Cook & Sargent may be delivered up to him, and pending such suit, that a receiver may be appointed to collect said notes; & further, that the said Antoine
296 Le Claire may be compelled to execute a deed of the land mentioned in said contract, & as required thereby.

297 This defendant therefore files this his answer & cross-bill, & makes the said John P. Cook, Ebenezer Cook, Antoine Le Claire, Cook & Sargent, Jos. A. Le Claire, & Louis C. Dessaint, & the said plaintiff, parties, & prays the court that upon the hearing of the pleadings & proofs, it will adjudge that the acts of the said parties, as stated aforesaid, were fraudulent, & that the said Dessaint acquired no title by his said deed, & that said Ebenezer Cook & the plaintiff acquired no title by their said deeds of said premises; and this def't prays that the said Geo. L. Davenport may be enjoined from making any conveyance of said premises, and that all of said parties may be enjoined from further interfering with this defendant, or taking any action to prevent this defendant from completing his said contract with said Le Claire, or from hindering & delaying him with reference thereto, and that a temporary injunction may issue according to the practice of this court, which may be made final; and that all persons claiming, or to claim, title of said premises through or under said G. L. Davenport may be decreed to have had notice of the rights of this def't in the premises, and that
298 this def't may have leave to file a further cross-bill herein, if he shall be so advised, & for costs.

JAMES MAY.

PARKER & EDWARDS, *Atty's for Def't James May.*

SCOTT CO., *ss:*

James May, being duly sworn, says that he has heard the foregoing answer & cross-bill read, & knows the contents thereof, & that the facts stated therein are true of his own knowledge except as to those matters stated on information or belief, & as to those matters he believes it to be true.

JAMES MAY.

Subscribed & sworn to before me this 23rd Feb'y, 1860.
[SEAL] ALF. EDWARDS,
Notary Public, Scott Co., Iowa.

299 EXHIBIT A.

I will agree to compromise all matters in controversy or dispute between Antoine Le Claire, esq., and myself, if he will now agree to the following proposition:

On my part, I will agree to cancel my claim to what may be due or claimable by me from Mr. A. Le Claire, of every kind, and will give him a clear deed for "Rose Bank," with all the improvements on the 143 acres of land, I binding myself to pay, within twelve months, the incumbrance that is now on the "Rose Bank farm."

Said Antoine Le Claire on his part to give up and release all claims he has, of every kind, on me, and to give me a good and sufficient deed & transfer of all his right, title, interest, and claim to all that part of his "reserve" at the head of the rapids, which he sold, or contracted to sell, to Capt. A. H. Davenport, of Le Claire, he, A. Le Claire, putting

me in law and in fact in his place and stead, as if he had made a clear deed to me when he made the contract to sell to said A. H. Davenport, said Le Claire transferring to me all kinds of payments and securities that he has received from said A. H. Davenport.

Said Le Claire also to give me a good deed for the land he owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland near said island. It will be the understanding, if we made an amicable compromise, as I propose, that I am to give Mr. Le Claire no unnecessary trouble in any compromises or settlements that may be necessary to make with said A. H. Davenport, or others, who have, or may be purchasers of said land; but it is to be clearly understood that said A. Le Claire is to give me all the information, facil-
300 ity, and power he can, to enable me to carry out, in good faith, all the conditions he has made up to this date with the said A. H. Davenport in the premisssses.

I do not consider the acceptance of this compromise on the part of Mr. A. Le Claire as his awarding to me all that I have a just right to claim, but I feel persuaded that Mr. Le Claire is under the erroneous impression that my claims are much less in equity and good conscience than they really are.

I will now prefer that we submit the matter as I proposed on the 26th ult'o.

I have sanguine hopes that a fair, amicable adjustment would render me a more profitable award than I will get now by this proposition, & save me from a considerable amount of labor, care, and anxiety that must devolve upon me, if my friend Le Claire accept this.

(Signed) JAMES MAY.

DAVENPORT, *Feb'y 4th*, 1859.

I hereby also agree to the above proposition.

(Signed) A. LE CLAIRE.

DAVENPORT, *March* 8, 1859.

I hereby also agree to the above proposition.

(Signed) JAMES MAY.

DAVENPORT, *March* 8, 1859.

Witness: (Signed) JNO. P. COOK.

301 EXHIBIT B.

Received of Antoine Le Claire five promissory notes, of seven thousand dollars each, executed by A. H. Davenport, and dated 7th May, A. D. 1857, payable respectively on the 1st day of January, 1858, 1859, 1860, 1861, & 1862, on one of which is endorsed a payment of three hundred & fifty dollars.

Received also certain promisory notes against sundry persons particularly described in a receipt of said Le Claire to said A. H. Davenport, which latter notes were given to said Le Claire by said Davenport as collateral security for the payment of the said note so executed by said Davenport.

We also have the mortgage of Davenport to secure said first-named note. Now, when James May shall pay off and release all mortgages, judgments, and other liens upon "Rose Bank" farm, (so called,) situated north of Duck Creek, in Scott County, Iowa, and shall deliver to said Le Claire a good and sufficient deed therefor, in accordance with a contract

in writing, signed by said Le Claire, and made on the 8th of March, 1859, provided the same is done within one year from the 8th of March inst., then, and in that case, we are to deliver to said James May all the foregoing note and mortgage.

On delivery of the collection notes aforesaid said May shall execute a receipt to said Davenport for the same according to the existing contract between Le Claire and Davenport.

March 10th, 1859.

(Signed) COOK & SARGENT.

302 *List of notes referred to in foregoing answer and cross-bill.*

Drawer.	Am't.	Date.	Due.	Endorsed.
J. W. Buckman	$361 12	M'ch 18, '56	M'ch 18, '57	$23 50, Dec. 20, '58
" " "	361 12	M'ch 18, '56	M'ch 18, '58	
" " "	361 12	M'ch 18, '56	M'ch 18, '59	
Jas. Coe, Jas. A. Lewis, & A. J. Johnston	342 50	Dec. 9, '57	Dec. 9, '59	
J. G. Huntington	247	June 3, '55	June 3, '59	
Jas. Coe, Jas. A. Lewis, & A. J. Johnston	300	Dec. 9, '57	Dec. 9, '60	
" " " " "	500	" " "	June 15, '58	$20, June 21, '58
" " " " "	400	" " "	Dec. 9, '58	
Dennis Barnes, mayor	250	June 9, '55	June 9, '57	
" " "	250	" 29, '55	" 29, '58	
Conrod Arnold	100	Oct. 25, '58	Oct. 25, '59	
P. M. McIntire	343 33	April 20, '57	Dec. 20, '58	
" " "	343 33	" "	July 1st, '58	
" " "	343 33	" "	Dec. 20, '58	Oct. 6, '57, $35 00
John H. Suter	350	" 15, '57	Oct. 1st, '58	June 3, '58, 40 00
" " "	175	" "	" "	July 1, '58, 40 00
Andrew Black	100	Sept. 20, '57	Sept. 20, '58	" 2, '58, 4 60
" "	100	" "	" 20, '59	
Anderhalter	225	April 20, '57	July 20, '58	
"	225	" "	Dec. " "	
"	225	" "	Jan'y 1, '58	
Wm. Burton	301 42	Oct. 10, '57	Dec. 25, '57	25
" "	257 33	" "	July 20, '58	
" "	257 33	" "	" 20, '59	
J. R. Morgan	60 50	" "	Dec. 10, '57	
Thos. Y. Phares	225	Ap'l 1st, '57	Ap'l 1st, '58	
" " "	225	" "	" 1st, '59	
Thos. Crawford	186	Oct. 20, '58	Aug. 1st, '59	
John Hawthorne	100	June 25, '57	June 25, '58	
" "	200	" " "	Jan'y 1, '58	
" "	100	" " "	Dec. 25, '58	Oct. 2, '58, $10
303 Rudolph Moran	233 33	Nov. 25, '57	Nov. 25, '58	Dec. 22, '58, 9
" "	233 33½	" " "	Nov. 25, '59	
" "	233 33½	" " "	" " '60	
John C. Ayres	133 33	July 1, '57	July 1, '58	
" " "	133 33	" " "	Dec. 1, '58	
Wm. Dipple	300	Aug. 25, '57	Aug. 25, '58	
" "	300	" " "	" " '59	
" "	300	" " "	" " '60	

304 (Indorsed:) 5420. George L. Davenport vs. James May. Copy. Answer & cross-bill. Filed Feb'y 23rd, 1860, at 4 p. m. This bill is a copy of the one filed, & is also sworn to. P. & E.

305 And afterwards, to wit, on the 23rd day of February, A. D. 1860, there was filed in the office of the said clerk affidavits for def't in order to shew cause why plaintiff should not have leave to dismiss his suit in the words & figures following, to wit:

District court, Scott Co.

GEO. L. DAVENPORT
vs.
JAMES MAY.

SCOTT CO., *ss:*

James May, being duly sworn, says he is def't herein; that he has

been informed and believes that the p't'ff's attorneys, at the last Jan'y term of this court, asked leave of this court to dismiss their said bill on payment of costs, which notice was resisted by the attorneys of this defendant; that, as he verily believes, the object of the said plantiff in making said motion was to exclude the deposition of Charles Powers, taken by this defendant, and a copy of which is annexed to this affidavit, and that it is the intention of the said p't'ff and his confederates to have another suit commenced in the name of some other person wherein the said deposition cannot be used; and this def't says
306 that if the p't'ff's att'ys had not given consent to his having till 30 days after [after] the adjournment of said court to file his answer herein, he would have had the same prepared & filed; that Antoine Le Claire & Geo. L. Davenport, L. C. Dessaint, Cook & Sargent, John T. Cook, & Ebenezer Cook, & Jas. A. Le Claire have done this def't great injury & injustice in the course they have taken in the premices; and that great injustice will be done him if the p't'ff is now allowed to dismiss this case; and as required by the order of the court to shew cause in ten days from the 14th Feb'y, 1860, why the p't'ff should not dismiss his suit, he exhibits this answer & cross-bill & this & the affadavits annexed.

JAMES MAY.

Subscribed & sworn to before me this 22 Feb'y, 1860.
[NOTARIAL SEAL.] ALFRED EDWARDS,
Notary Public, Scott Co., Iowa.

Scott C'ty district court, Jan'y term, 1860.

GEO. L. DAVENPORT
vs.
JAMES MAY.

STATE OF IOWA, *Scott County, ss:*

Alfred Edwards, being duely sworn, deposes & says that he is one of the attorneys for the defendant; that he had a conversation in relation to filing an answer in the above-entitled cause with Charles E.
307 Putnam, esq., att'y for the plantiff, and Antoine Le Claire, on two differrent occasions before the time for taking the default at the Jan'y term, to file an answer after the final adjournment of court; said Putnam then remarked that he would take it under advisement; and subsequently on the same day said Charles E. Putnam informed affiant that he might have until thirty days after the adjourment of said term to file his answer to said bill, provided def't's attorneys would not take any further depositions until the answers were filed in said cause. Affiant further says that no depositions have been taken in behalf of def't since [since] said agreement, and that he understood that under this agreement the failure to file such answer should in no way prejudice the right of the defendant. Affiant further says that had he not relied upon said agreement he would have answered for defendant before the expiration of the seccond week of said Jan. term, A. D. 1860.

ALFRED EDWARDS.

Sworn and subscribed before me this day of Feb'y, A. D. 1860.
H. G. BARNES,
Notary Public, Scott C'ty, Iowa.

Scott C'ty district court, Jan. term, 1860.

GEO. L. DAVENPORT
vs.
JAMES MAY.

STATE OF IOWA, *Scott C'ty, ss:*

George H. Parker, being duly sworn, deposes that he is one of the att'ys for the defendant in the above-entitled action; that in that capasity he has had frequent conversations with Charles E. Putnam, esq., one of the att'ys for the p't'ff, and Antoine Le Claire, during the Jan'y term of the district court of Scott County, Iowa, concerning this cause; that affiant understood from said conversations that if the defendant filed his answer within thirty days from the final adjournment of the term it would be satisfactory to p't'f & his attorneys; that upon one occasion prior to the taking of defaults at said term, affiant called at the office of Mess. Putnam & Leake, att'ys for pl't'ff, and told them, both being present, that an answer would be filed in this cause by the time prescribed for taking defaults in actions at law by the court if they insisted upon it. It was then agreed, as affiant understood, that def't need not file his answer until thirty days after the rising of the court, and that no prejudice should result to the defendant
309 in this cause in consequence of such delay and the first intimation that affiant had that the plantiff's att'ys did not so understand the agreement was when the motion was made on the 14th inst. to dismiss their bill by said att'ys; affiant further says that had he not relied upon said agreement to answer within thirty days from the rising of the court at the Jan. term, 1860, he would have filed an answer and cross-bill in said cause in behalf of defendant before the expiration of the second week of the said term and before the motion to dismiss by plantiff's att'ys was made.

GEO. H. PARKER.

Sworn to & subscribed before me this 22nd day of February, A. D. 1860.

[NOT. SEAL.] ALFRED EDWARDS,
N. P., Scott C'ty, Iowa.

And afterwards, to wit, on the 23rd day of Feb'y, A. D. 1860 there was filed in the office of the said clerk a motion in the words and figures following, to wit:

Scott district court.

GEO. L. DAVENPORT
vs.
JAMES MAY.

The defendant moves the court that his answer & cross-bill herein may be refiled "nunc pro tunc" as of the 2nd day of the last Jan'y term of this court, which motion will be founded upon the affadavits
310 & papers filed in this cause.

Davenport, Feb'y 23, 1860.

PARKER & EDWARDS,
Defendant's Att'ys.

And afterwards there was filed in the office of the said clerk a motion to change venue in the words & figures following to wit:

Scott district court.

GEO. L. DAVENPORT }
vs.
JAMES MAY. }

SCOTT COUNTY, *ss:*

To Hon. J. F. Dillon, district judge, in chambers:

I, James May, being duly sworn, state that as I verily believe the Hon. John F. Dillon, judge of this district, is interested directly on the event & result of this suit, inasmuch as affiant believes he has been of council in relation to the matters between affiant and Antoine Le Claire, or familiar with the transactions between deponant & the persons deponant has charged on his cross-bill as confederates, or some of them, and formed some opinion with reference thereto, which may or might prejudice affiant; wherefore affiant prays your honor at chambers for a change of venue to the most convenient & proper county, according to law.

JAMES MAY.

Subscribed & sworn to before me this 25 Ap'l, 1860.

ALF. EDWARDS,
Notary Public, Scott C'ty, Iowa.

311 & afterwards there was filed in the office of the said clerk an order at chambers in the words and following, to wit:

In Scott district court, at chambers, Ap'l 25th, 1860.

GEO. L. DAVENPORT }
vs.
JAMES MAY. }

On this day the defendant, in obedience to the order made at the last term of said court to shew cause why complainant should not dismiss his bill, (complainant having moved to do at his cost at last term,) appeared by Parker & Edwards, his attorneys, & the complainant, by Putnam & Leake, his attorneys, & the defendant on this day, (April 25, 1860,) filed his affadavitt that the judge of this court was interested in this cause stating the all'ged reasons therefor.

Whereupon it was ordered that the whole matter afforesaid stand for hearing at the next term of the said Scott district court.

JOHN F. DILLON, *Judge.*

And afterwards, on the 16th day of June, A. D. 1860, there was entered on the record of [of] the district court an entry in words & figures following to wit:

GEO. L. DAVENPORT }
vs.
JAMES MAY. }

This day this cause came on to be herd, and the defendant May

312 appears and files his cross-bill, and afterwards, on the 1st day of March, A. D. 1861, there was entered on the records of the district court an entry in words & figures following, to wit:

GEO. L. DAVENPORT
vs.
JAMES MAY.

This day this cause came on to be herd on application of defendant for a change of venue to Johnson County, Iowa, and the court, on hearing argument of council, orders that the venue be changed to Johnson County, Iowa.

Then afterwards, to wit, on the 11th day of June, A. D. 1861, there was entered on the records of the district court an entry in words & figures following, to wit:

GEO. L. DAVENPORT
vs.
JAMES MAY.

We consent that this cause be discontinued on the part of the complainant; and on behalf of respondant discontinued and withdrawn, his answer & cross-bill herein filed; entry to be made as of Feb'y term, A. D. 1861; defendant has leave to withdraw deposition from files.

CHARLES E. PUTNAM,
Att'y for Complainant.
PARKER & EDWARDS,
Att'ys for Def't.

313 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, cl'k of the district court in & for said county, do hereby certify that the foregoing is a full & complete exemplification of all the papers on file in my office, and of the record entries made in the above case.

In testimony whereof I have hereto set my hand and caused the seal of said court to be affixed, at office in the city of Davenport in said county, this 19th day of October, A. D. 1863.

[SEAL.] IRA M. GIFFORD,
Clerk of District Court.

[Gov't stamp: I. M. G., Oct. 19, '63.]

314 No. 29.—*Transcript, LeClaire v. A. N. Davenport.*

STATE OF IOWA, *Scott County, ss:*

In district court for s'd county, in chancery.

ANTOINE LE CLAIRE
vs.
ADRIAN H. DAVENPORT; MRS. DAVIDSON; 3, James Coe; C. H. Stacy; 5, William Stacy; John Schennell; James Farrs; S. Barnes; J. C. Thayer; Joseph Collum; M. Disney; Andrew Jack; James [James] G. Stacy; A. Black; Thomas Jennings; Samuel Elliot; G. Scher-

nel; H. G. Barner; 19, Thomas Longbottom; Eli Smith; H. Schleffel; A. Anderhalsen; J. R. Morgan; R. Morant; 25, Coe, Johnson & Lewis; Thomas Crawford; 27, Thomas Pharias; Benton John; John Buckman; S. McIntyre; John Suyter; City of Le Claire; Wm. T. Galt; W. & J. A. Steele; R. Baird; John Hawthorn; 37, Mrs. McIntosh; S. G. Hopkins; J. G. Huntington; S. Arnold; 41, J. C. Ayres; R. Chennett; Jewett, Tibbitts & Co.; Nathan S. Smith; Merchants & Mechanics'
315 Bank, Chicago; 45, Andrew Logan; 46, William Vantuyl; 47, Antoine Le Claire; 48, Charles C. Goodale; 49, John Shortmiller; 50, F. Fifner, (or Pifnor;) 51, A. J. McCreary & Co.; 52, Paul S. Chandler; 53, D. Starkie; 54, Christ. Terna; 55, P. Eckhardt; 56, T. Anthony; 57, Corbin & Dow; 58, Moore & Smith; 59, Freeman Allen; 60, T. C. Eads; 61, Thayer, Hart & Co.; 62, Trego & Woodruff; 63, Foster & Stahl; 64, Klingel & Ferdinand; 65, Collins, Kellog & Kesley; 66, F. M. Bennedit; 67, Peter Smith; 68, H. Closterman; 69, Knight, Prescott & Co.; 70, McFarland & Snyder; Le Claire, Davenport & Co.; Newton Lawson; George L. Davenport; Mige Lischt; E. Flosscht; C. M. McClung & Co.; Fred. Weyhe; J. Rapp; H. Schollar; E. Moller; O. Lobhart; Jos. A. Le Claire: Potter, Elder & Nute; Mitchell & Cable; Horace Metcalf; 86, Robert Means; E. A. & S. R. Filley, jun.; E. W. Green & Co., ; D. A. January & Co.; Miller & Scott, ; Samuel E. Smith; Farrington & Stevens; E. S. Smith & Co; James Jack; John Rogers.

316 To all of the above-named defendants, and to each and every one of them:

You and each of you are hereby notified that there is now on file in the office of the clerk of the district court in and for s'd county and State of Iowa, a bill of complaint of Antoine Le Claire, on the chancery side thereof.

Said bill prays that a certain mortgage, made and executed by you, A. H. Davenport, to the petitioner, on the 7th day of May, 1857, on the following real estates lying and being situated in Scott County, Iowa, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire, known as Le Clair's reserve, that has not been by the said Le Claire conveyed heretofore. Said mortgage was thus executed to secure the purchase-money, for which said Davenport gave unto said Le Claire, on the same day, five promissory notes, each for the payment of seven thousand dollars; for full particulars you will please refer to copies of said notes and of said mortgage attached to said bill on file.

317 Said bill, among other relief, prays judgment on said notes, and in default of the payment thereof, for the sale of said real estate, and a foreclosure of any equity of redemption in and to the same. Said

petition, alleging that the notes given by some of you defendants for purchase-money for certain parts of said property which you purchased from A. H. Davenport, and for which you obtained bonds, are now due and the property of the plaintiff, prays that you may be decreed to pay said notes, and in event of your non-payment that the property respectively sold to each of you be sold according to law, and all your equities of redemption barred thereto, and the bonds to be cancelled.

And you are just here notified that unless you appear and answer unto said bills of complaint, on or before the first day of the next term of our district court to be begun and holden at the court-house in said county and State, on the first Monday in June, A. D. 1860, a decree will
318 be entered up against you, in accordance with the prayer of said bill, and the relief therein prayed for granted.

COOK & DRURY,
Att's for Pl'ff.

DAVENPORT, *April*, 1860.

We accept due service of the above notice for Paul S. Chandler, Corbin & Dow, T. Piffner, T. Florscht, Horace Metcalf, Mitchell & Cable, E. Moller, J. Rapp, John Shortmiller, D. Starkie, Peter Smith, H. Scholar, Christ. Yerna, Fred. Weyhe, Knight, Prescott & Co., Mige Sischt, O. Lobhart, & Moore & Smith.

CORBIN & DOW,
Att'ys for said parties.

319 I accept due service of the within notice this 27th day of April, 1860, for self and Benton.

J. R. MORGAN.

I accept due service of the within notice this 27th day of April, 1860.
SAM'L ELLIOT.

I accept due service of the within notice this 27th day of April, 1860.
THOMAS CRAWFORD.

I accept due service of the within notice this 27th day of April, 1860.
RICHARD CHENNETT.

I accept due service of the within notice of 27th April, 1860.

WM. S. MACKENZIE. ELI + SMITH. (his mark.)

I accept due service of the within notice this 27th April, 1860.
J. W. BUCKMAN.

I accept due service of the within notice this 27 day of April, 1860.
S. C. BARNES.

I accept due service of the within notice this 27 April, 1860.
J. A. & W. STEEL.

320 I accept due service of the within notice this 27th April, 1860.
MARIA L. DAVIDSON.

I accept due service of the within notice, April 27, 1860.
GEORGE CHENNELL.

I accept service on the within notice, April 27, 1860.
JOHN H. SUITER.

I accept service on the within notice, April 27, 1860.
S. G. McINTYRE.

I accept service on the within notice, April 27th, 1860.
RICHARD BARD.

I accept service on the within notice this 8th day of May, 1860.
JAMES FARRS.

I accept service on the within, May 9th, 1860.
WM F. GAULT.

I accept service on the within, May 12th, 1860.
H. SCHLEFFEL.

I accept service on the within process, May 12th, 1860.
JAMES JACK.

I accept service on the within process, May 14th, 1860.
C. H. STACEY.

321 I accept service on the within process, May 14th, 1860.
S. G. HOPKINS.

I accept service on this process, May 14th, 1860.
ANDREW JACK.

I accept service on this process, May 20th, 1860.
I accept.
SIMON ARNOLD.

I accept service on this process, May 23d, 1860.
J. G. STACEY.

I accept service on the within process, May 23d, 1860.
ALEND AU DAS GALTAN.

I accept service on the within process, May 23d, 1860.
J. G. HUNTINGTON.

I accept service of the within notice for self and Le Claire, Davenport & Co., May 23d, 1860.
GEO. L. DAVENPORT.

I accept service of this notice May 25, 1860.
JOE A. LE CLAIRE.

We accept service of the within notice for Jewett, Tibbits & Co., Wm. Van Tuyl, A. J. McCreary & Co., T. C. Eads, Thayer, Hart, & Co., Trego & Woodruff, Foster & Stahl, Klingal & Ferdinand, Collins, Kellogg & Kerley, C. M. McClung & Co., Farington & Stevens, D. A. January & Co., E. S. Smith & Co., E. A. & S. R. Filly, Miller & Scott, H. W. Green & Co.

COOK, LINDLEY & CLARK,
P'r MACK.

322 I accept due service of the within notice this 25th day of May, 1860.

RUDOLF MORANT.

I accept service on this notice for S. E. Smith, trustee, May 26, 1860.

R. W. RODGERS.

I accept service on this notice this 26th day May, 1869.

M. DISNEY.

I accept service on this within notice for myself and Johnson & Lewis, May 27, 1860.

JAS. COE.

I accept due service of this notice.

CHAS. E. PUTNAM,
Att'y for H. Closterman.

323 (Indorsed:) Copy. In Scott County D. C. Antoine Le Claire vs. Adrian H. Davenport et alias. Original notice.

I accept services of the within notice, May 23d, '60.

A. H. DAVENPORT.

324 THE STATE OF IOWA, *Scott County, ss:*

In district court for said county.—In chancery.

To the Hon. John F. Dillon, judge of the 7th judicial district, in chancery sitting:

Your petitioner, Antoine Le Claire, humbly complaining, sheweth unto your honor, that previous to the seventh day of May, A. D. 1857, he was possessed in fee-simple of a large tract of real estate, lying and being situated in said Scott County, Iowa, to wit, a certain tract of land at the head of the rapids of the Mississippi River, known as a part of "Le Claire's reserve" and lying within the corporate limits of the present city of Le Claire, in said Scott County, Iowa.

That your petitioner heretofore, to wit, prior to the 7th day of May, 1857, aforesaid, laid out, subdivided, platted out, and recorded, according to law, a part of said tract, which said subdivision was
325 named, and still bears the name of Le Claire's addition to the town of Le Claire.

That thereafter, to wit, at sundry and divers times and up to said 7th day of May, 1857, your petitioner bargained and sold several of the lots in said "addition" to sundry parties; that on the said 7th day of May, 1857, your petitioner bargained, sold, and conveyed unto Adrian H. Davenport, (whom your petitioner prays may be made a party defendant to this bill of complaint,) and the said Adrian H. Davenport then and there purchased and bought from your petitioner the following described real estate, to wit: All that part of a piece of land in Scott County, Iowa, lying within the present limits of the city of Le Claire, known as Le Claire's reserve, that has not been by the said Le Claire conveyed heretofore, (meaning prior to said 7th day of May, A. D. 1857.)

And your petitioner states that on the 7th day of May, A. D.
326 1857, he then and there executed and delivered unto said Davenport a good and sufficient warranty deed for said last-mentioned real estate, for the consideration of thirty-five thousand dollars.

Your petitioner alleges that on the said 7th day of May, at the time and place of the execution of said deed and semultaneously with the execution and delivery thereof, the said Adrian H. Davenport executed and delivered unto your petitioner his certain five promissory notes, each for the payment of seven thousand dollars, the last four of said notes bearing interest from the first day of January, 1858; said notes being payable on the first days of January, A. D. 1858, 1859, 1860, 1861, and 1862, respectively, of each and every of said years, according to the tenor and effect of the same.

Said notes were given, as aforesaid, for the purchase-money for the real estate purchased, as aforesaid, by said Adrian H. Davenport. Copies of said notes are hereunto attached, marked, respectively, Exhibets "A," B, "C," D, & "E," and prayed to be taken as a part hereof,

327 to which exhibbets, for fuller description of the notes, reference is hereby made.

Your petitioner states that then and there, to wit, on the said 7th day of May, 1857, and simultaneously with the execution and delivery of said deed and notes aforesaid, the said Adrian H. Davenport, at the same time of the execution of the deed aforesaid, and for the purpose of securing unto said Antoine Le Claire the payment of said promissory notes, given for the purchase-money as aforesaid, made, executed, and delivered unto your petitioner a certain mortgage, conveying therein unto him the property described in the deed hereinabove menmentioned, with a condition, however, thereunder written, in substance as follows, to wit, that if the said Davenport should well and truly pay the notes hereinabove mentioned, according to the tenor and effect of the same, then the said mortgage was to be considered and held null and void; otherwise to be and remain in full force and virtue.

Referance, for more particularity, is hereby made to a copy of said mortgage hereto attached, marked Exhibet "F," and prayed to be taken as a part thereof.

328 The said mortgage is duly on the records of Scott County, Iowa, in book A of town-lot mortgages, on page 352 thereof.

Your petitioner states that said mortgage is still his property.

Your petitioner is advised and believes, and therefore alleges, that heretofore, to wit, subsequent to said 7th day of May, A. D. 1857, said Adrian H. Davenport sold unto various and divers persons certain lots and out-lots in said "addition."

Your petitioner does not know all the persons to whom said Davenport sold said lots or out-lots, or what particular described lots or out-lots he sold to the respective parties, but saith that he is advised and believes that the said Davenport sold unto the parties hereinafter set forth the property mentioned and written oposite to each of their respective names, and that said Adrian H. Davenport gave unto said parties in some cases deeds for some of the lots, and in other cases the said Davenport gave bonds for deeds.

329 Your petitioner states that the following are the names of said purchasers aforesaid, to wit:

Mrs. S. Davidson	lots 8 & 9,	in	block	two.
James Coe	lots 8 & 9,	"	"	three.
C. H. Stacy	4, 5, 2, 3, 6, 7, & 10,	"	"	three.
William Stacy	1, 4, 5, 8, & 9,	"	"	four.
John Schennell	all of		"	six.
James Farr	lot 1,	"	"	three.
S. Barnes, assignee of J. C. Trayer	1, 2, 3, 4, 5,		"	twelve.

Joseph Collum	lots 9 & 10,	"	"
M. Disney	6, 7, 8, 9, & 10,	"	" thirteen.
Andrew Jack	5,	"	" fourteen.
James G. Stacy, (assignee of A. Black)	7 & 18,	"	"
Thomas Jennings	lot 1,	"	" fifteen.
Samuel Elliott	lot 5,	"	" sixteen.
G. Schennell	south-half	"	twenty.
H. G. Barnes	lot 1, in	"	twenty-four.
Thomas Longbottom	out-lots 15 & 16.		
Eli Smith	" 22.		

H. Schleffel $2\frac{58}{100}$ acres on south side of tract.

Your petitioner is willing to consider all deeds made to any of said parties by said Davenport, prior to the 27th of March, 1860, valid, and to release the said premises so conveyed from any lien which
330 has or may to the same, by virtue of said mortgage, given by Davenport aforesaid to your petitioner; but only in such cases where the purchase-money has been paid.

And your petitioner is informed and believes that said Adrian H. Davenport heretofore, to wit, subsequent to said 7th day of May, A. D. 1857, conveyed unto certain other persons hereinafter named an equitable title to certain lots and out-lots also hereinafter set forth; that said Davenport gave said parties bonds for deeds for the respective property so purchased by the respective parties conditioned in said bonds; that on the payment of certain notes given by said parties to said Davenport for the purchase-money of said real estate, the said Davenport would make, execute, and deliver unto said parties deeds for the respective parcels of land so to them bonded.

The following are the names of the parties who are said to have recieved bonds aforesaid, with the respective tracts so conveyed to each, and who have given notes for the balance due on the purchase-
331 money, which notes are now in the possession of and are the property of your petitioner:

Thomas Longbottom	out-lots	1, 2, 7, 8, 9, & 10.	
Anderhalter	"	12.	
R. Morant	"	13.	
Coe, Johnson & Lewis	"	23.	
Thomas Crawford	"	27.	
Thomas Pharias	"	28 & 29.	
Benton	"	20.	
John Buckman	"	33 & 40.	
S. McIntyre	"	34.	
John Suyter	"	41.	
City of Le Claire	"	44 & 45.	
Wm. F. Galt	lots	1, 4, 5, 8, & 9, in block	1.
W. & J. A. Steele	"	2, 3, 6, 7, & 10, " "	1.
R. Bard	"	2, 3, & 6, " "	5.
John Hawthorn	south half,	" "	7.
Mrs. McIntosh	all,	" "	9.
S. G. Hopkins	lots	1, 2, 3, 4, & 5, "	13.
J. G. Huntington	"	9 & 10, "	14.
A. Jack	"	1, 2, 3, & 4, "	"
Arnold	"	6, "	"
J. C. Ayres	"	1, 2, 3, 4, "	16.
R. Schennel	north half,	"	20.

Your petitioner prays that all of said above-named parties may be made defendants to this suit as well as all assignees or owners of said bonds when discovered.

Your petitioner further states that the said five promissory notes given by said Davenport to him as hereinabove stated are now due, remain unpaid, and are still your petitiener's property.

Your petitioner avers, that he is informed and believes that the following-named persons have, or pretend to have, some claim or interest in the said mortgaged premises; he therefore prays that they be made parties defendant hereto, and be ruled to answer. They are as follows: Jewett, Tibbitts & Co., Nathan S. Smith, Merchants & Mechanicks Bank, Chicago, Andrew Logan, Le Claire, Davenport & Co., Wm. Vantuyl, Newton Lawson, Antoine Le Claire, George L. Davenport, Charles C. Goodale, Mige Lischt, John Shootmiller, E. Floscht, F. Tifner, (or Pifner,) C. M. McClung & Co., A. J. McCreary & Co., Fred. Weyhe,
333 Paul S. Chandler, J. Rapp, D. Starkie, H. Schollar, Christ. Zerna, E. Möller, P. Eckhardt, O. Lobhart, F. Anthony, Jos. A. Le Claire, Corbin & Dow, Potter, Elder & Nute, D. Starkie, Moore & Smith, Mitchell & Cable, Freeman Allen, Horace Metcalf, T. C. Eads, Robert Means, Thayer, Hart & Co., E. A. & S. R. Tilley, Trego & Woodruff, S. H. Green & Co., Foster & Stahl, D. A. January & Co., Klingal & Ferdinand, James Jack, Collins, Kellogg & Kirby, Miller & Scott, F. M. Benedict, who are judgment creditors. The following parties also claim some interest in said mortgaged premises: John Settig, Peter Smith, Samuel E. Smith, H. Closterman, Farmington & Stevens, Knight, Prescott & Co., E. S. Smith & Co., McFarland & Snyder, and John Rogers.

Your petitioner charges the truth to be, that said Adrian H. Davenport is indebted to him on the said notes and security above mentioned for the principal and interest accrued on said notes and for costs of suit; that he has wholly failed, neglected, and refused to pay said
334 notes, or any part thereof, and still neglects, fails, and refuses so to do, to the great injury of your petitioner in the premises.

All of which doings and actings, on the part of the said defendant, are against equity and good conscience, and tend to the manifest injury of your petitioner.

In consideration whereof, and whereas your petitioner is wholly remedyless at law, and can only have adequate remedy and relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable:

Your petitioner therefore prays that an account may be taken under and by the direction of this honorable court of the amount due him on said notes of Adrian H. Davenport, secured as aforesaid; that the defendant be decreed and adjudged to pay the sum so to be found due, interest, and costs of suit, at some early day to be fixed by the court therefor; and that in default of such payment, that the property, men-
335 tioned in said mortgage, be sold in separate parcels, to wit, by the lot or out-lot, according to law, or such portions of said tract of land as may be found sufficient to pay said amount of indebtedness so to be found due, and the proceeds of such sale to be applied in the satisfaction and discharge of said indebtedness.

And your petitioner prays that all of said defendants herein, or any person or persons claiming, or to claim, by, through, or under, them, any interest, right, or title in and to said premises, or any part or parcel thereof, may be forever barred and foreclosed from setting up any claim or title to said premises, either in law or in equity.

And your petitioner further prays that said defendants hereinabove

named, who hold an equitable title to certain parcels of land, as hereinabove set forth, be decreed and adjudged to pay your petitioner the respective sums due by them on the notes by them given as purchase-money for their respective purchases, and that in default of such
336 payment that the same may be sold in the separate parcels they purchase the same in, according to law, and the proceeds of such separate sales be applied to the satisfaction of the respective indebtedness on said notes; and that the said bonds be cancelled and held null and void, and all persons holding the same or claiming by, through, or under them, be forever barred and foreclosed from setting up any claim, title, or interest in and to the said respective tracts or parcels of land, or any part thereof.

And your petitioner prays for such other general and special relief in the premises as this case may seem to demand, and may appear meet to your honor, and agreeable to equity and good conscience; and your petitioner, as in duty bound, will ever pray.

COOK & DRURY,
Solicitors for Plaintiff.

337 *Mortgage from A. H. Davenport to A. Le Claire.*

The original on file in my office is a half-sheet, and has no certificate of the recorder upon it.

IRA M. GIFFORD, *Clerk D. C.*

EXHIBET F.

This indenture, made this seventh day of May, A. D. 1857, between Adrian H. Davenport, of the city of Le Claire, of the first part, and Antoine Le Claire, of the city of Davenport, of the second part, witnesseth that the said party of the first part, for the consideration of one dollar, the receipt whereof is hereby acknowledged, as well as for the better securing of five promissory notes hereinafter described, doth by these presents grant, bargain, sell, and convey, unto the said party of the second part, his heirs and assigns, forever, the following described tract of real estate lying and being situated in the county of Scott, and State of Iowa, to wit: All that part of a piece of land lying within the present limits of the city of Le Claire, knowns as "Le Claire's reserve," Interlined. that has not been by the said *Le Claire* conveyed heretofore, being the property conveyed by the party of the second part, to the party of the first part by his deed of bargain and sale, bearing Interlined. even date, *and executed simultaneously* with these presents; to have and to hold said premises above described unto the said party of the second part, his heirs and assigns, forever.

Provided always, and these presents are upon this express condition, whereas said party of the first part has this day executed unto the party of the second part his certain five promissory notes, each for the pay-
338 ment of seven thousand dollars, (the last four with interest from the first day of January, A. D. 1858,) the said notes being payable on the first days of January, A. D. 1858, 1859, 1860, 1861, and 1862, respectively, according to the tenor and effect of said notes, which said notes are given for purchase-money: Now, if the said Adrian H. Davenport, his executors, or administrators shall pay or cause to be paid to the said Antonie Le Claire the said notes when due, with the interest thereon, according to the tenor and effect thereof, then these presents shall be void; otherwise to be and remain in full force and virtue.

In testimony whereof the party of the first part has hereunto set his hand and seal the day and year first before written.

A. H. DAVENPORT. [SEAL.]

The words "Le Claire," "and executed simultaneously," on the first page, interlined before signing. Before—

JONO'N THOMPSON.

RECORDER'S OFFICE, SCOTT COUNTY, STATE OF IOWA,
November 3d, 1862.

I hereby certify that the within is a true & faithful transcript of the record of a mortgage from A. H. Davenport & wife to Antoine Le Claire, as the same appears upon the records of said county, in this office, in book A of town-lot mortgages, page 352, except the words at the bottom referring to the interlineations, which are not in the record.

A. F. MAST, *Recorder*,
By R. SMETHAM, *Dep. Rec.*

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the seventh day of May, A. D. 1857, before the undersigned notary public in and for said county, personally came Adrian H. Davenport, to me personally known to be the
339 identical person whose name is annexed to the foregoing indenture, and acknowledged the same to be his voluntary act and deed for the purposes therein set forth.

Witness my hand and notarial seal the day and year aforesaid.

[L. S.] JNO. W. THOMPSON,
Notary Public.

Filed May 15, '61.

I. M. GIFFORD, *Clk*,
By L. BISHOP, *Dep.*

340, 341 *Copy of notes.*

Marked A.

$7,000. On the first day of January, A. D. 1858, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, value received. Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

(Indorsement on back erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

(Indorsed:) This note is extended six months from maturity. Jan'y 1st, 1858, received interest on this note to July 1st, 1858, of three hundred & fifty dollars.

(Signed) A. LE CLAIRE.

B.

$7,000. On the first day of January, A. D. 1859, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent.; value received. Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

(Indorsement on back erased :) Without recourse on me, pay to order of James May.

A. LE CLAIRE.

C.

$7,000. On the first day of January, A. D. 1860, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of Jan'y, A. D. 1858, at six per cent. for one year; after that, ten per cent. Interest to be paid annually; value received. Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

(Indorsement on back erased :) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

(Indorsed :) Filed May 15, '61.

I. M. GIFFORD, *Clk*,
By L. BISHOP, *D'p'ty.*

D.

$7,000. On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that, ten per cent. Interest to be paid annually; value received. Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

(Indorsement upon back erased :) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

E.

$7,000. On the first day of January, A. D. 1862, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with interest from the first day of January, A. D. 1858, at six per cent. for one year; after that, ten per cent. Interest to be paid annually; value received. Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

(Indorsement on back erased:) Without recourse on me, pay to the order of James May.

A. LE CLAIRE.

(Indorsed:) Filed May 15, '61.

I. M. GIFFORD, *Clk*,
By L. BISHOP, *D'p'ty.*

(Indorsed :) The original of these five copies of notes now in my office, have the same endorsements and erasures as appears above.

IRA M. GIFFORD,
Clerk Dist. Court Scott County, Iowa.

342 *Copy of letter written by James May to the clerk of the district court of Scott County, Iowa.*

SIR: I am informed by my attorneys that I have a legal right to insist on the original mortgage and the original notes described in same, being filed in your office.

If that be so, I hereby claim that the original mortgage and notes of A. H. Davenport to Antoine Le Claire, dated 7th May, A. D. 1857, securing payment to said Le Claire, of purchase-money for the remainder of said Le Claire's interest in what is called the Le Claire reserve, recorded May 7, '57, be placed in your office as soon as practicable.

Yours, respectfully,
(Signed) JAMES MAY.

Case in the district court Scott C'ty, Iowa, is numbered 5697.

343 (Indorsed:) Copy of a letter written by James May to the clerk of the district court Scott County, Iowa.

344 (Indorsed:) Copy. The State of Iowa, Scott Co., in district court for said county, in chancery. Antoine Le Claire vs. Adrain H. Davenport et alias. Bill of foreclosure.

Filed April 24th, 1860.

I. M. GIFFORD, *Clk*,
By L. BISHOP, *Dep.*
COOK & DRURY,
Sol. for Plff.

345 In district court for said county, in chancery.—The State of Iowa, Scott County, ss.

ANTOINE LE CLAIRE *vs.* ADRIAN H. DAVENPORT ET AL. } The seperate answer of Adrian H. Davenport.

And now comes the said Adrain H. Davenport, one of the said defendants, and waiving further notice of process, answering, sayeth that it is true that previous to the 7th day of May, 1857, Antoine Le Claire was possessed of the real estate described in said bill of complaint, in fee-simple; that on the 7th of May, 1857, the said Le Claire sold and conveyed unto respondent the property described in said bill; that to secure the purchase-money for said premices, respondent executed the promisory notes set forth in said bill; that the same are said Le Claire's property, and the amount claimed is due thereon as therein stated; that simultaneously with the making and delivery of said notes and the execution of the deed afforesaid, respondent executed the mortgage in said bill of complaint described and fully set out. Defendant admits that he has heretofore sold and conveyed, unto divers
346 and sundry persons, lots and out-lots out of said real estate; that he has executed in some cases, deeds for said premices, and in other cases merely bonds for deeds, taking certain promisory notes for the payment of the purchase-money of the property so bonded. Defendant, admitting all general and special allegation of said bill of complaint, prays the honorable court that the interests of those parties to whom he has given deeds for said several parsels of land, and who

have fully paid the purchase-money therefore, be protected and recognised; and that in such cases where respondent has given bonds and taken notes, respondent prays that the said Le Claire may be decreed to make unto said bondholders or their assigns good and sufficient deeds for the respective property purchased by them, on condition that they pay or cause to be paid said outstanding notes, given respectively for the purchase-money; and respondent waives all further right to time to answer in.

(Signed) A. H. DAVENPORT.

Test: THOS. MCKENZIE.

347 (Indorsed:) Le Claire vs. A. H. Davenport et al. Seperate answer of Davenport.

Filed June 5, '60.

GIFFORD.

348 Scott County district court.

LE CLAIRE
vs.
DAVENPORT ET AL.

Take notice that, on the 19th day of June, 1860, to wit, at the present June term of this court, or as soon thereafter as council can be herd, James May will move this court to set aside the default taken June 16th, 1860, against said A. H. Davenport, & for leave to come in as defendant in this cause and have his rights adjudicated, and for leave to file a further amended cross-bill and answer. Said motion will be founded upon the foregoing affidavit, the pleadings in that case, and the cross-bill filed therein, and the papers on file in the case of George L. Davenport vs. James May; and in the cross-suit therein, being case No. 5420 in this court; and on the deposition of Charles Powers taken therein, June 18, '60.

PARKER & EDWARDS,
Attorneys for James May.

Scott County district court.

ANTOINE LE CLAIRE
vs.
A. H. DAVENPORT ET AL.

SCOTT COUNTY, *ss:*

Geo. H. Parker & Alfred Edwards, being duly sworn, say they are attorneys for James May; that the first information they had of this
349 suit was a few days before the commencement of this term; that they immediately informed the said May thereof; that neither said May, to deponents' belief, nor these deponents, had any knowledge that said A. H. Davenport intended to waive his right to nine months to answer; that early in the June term said James May agreed to come to deponents' office last week and prepare an answer and cross-bill in this suit; that said May, as defendants are informed and believe, was called suddenly to Pennsylvania on account of sickness of some one of his family; that said May has told deponents that he did not expect that

the Hon'e Judge Dillon would take any action in this case as it involved the same questions involved in the case of Davenport vs. May, where the case was ordered to be herd before Judge Miller; that on the 16th inst. plantiff's council moved for a default against said Davenport, and J. M. Talmage, esq., council for said Davenport, then waived his right to nine months to answer. These deponants, not having a cross-bill prepared, thereupon filed the cross-bill and answer filed by said May in the case of Davenport vs. May as a cross-bill in this suit;
350 and the court entered a default against said Davenport, but stated that they would take no action that would prejudice the rights of said May, nor decide upon the same, but would examine the matter, and if it came to the conclusion that a default would affect said May's rights they would set it aside.

Deponents say it is their intention in good faith, in behalf of said May, to contest the ownership of the notes upon which that suit is brought; that their knowledge is derived only from said May and his said cross-bill, the deposition of one Charles Powers, and from information gathered by them; and in a case of this magnitude, these deponents [to] do not believe that it is proper for them to make the affidavit to said answer.

Deponents say that they now believe said plantif and said Davenport have, since the deposition of said Charles Powers was taken, made an arrangement by which the property described in the mortgage refered to in the petition is to be sold and purchased by some parties in order to baffle the said May and prevent him from acquiring said
351 mortgage, and the notes secured thereby, or the proceeds thereof; and these deponents are advised that a sale of said property, especially in small lots to persons who will claim by the decree in this case, will tend to involve the parties in an endless litigation, if it will not actually deprive the said May from claiming the said notes and mortgage or the said property as his own. These deponents are informed by the oath of said May that the notes sued on were endorsed to James May, and that said May has never re-endorsed the same to the plantiff. Deponents say it is their intention, upon the return of said May, to file a more formal cross-bill herein.

(Signed) ALFRED EDWARDS.
G. H. PARKER.

Subscribed and sworn to before me this 19th June, 1860.
(Signed) IRA M. GIFFORD,
Clk D. C.

(Indorsed:) No. . Antoine Le Claire vs. A. H. Davenport et al. Affadavits & ni motion by James May. Parker & Edwards, attorneys for J. May.

Filed June 20th, 1860.

GIFFORD, *Clk.*

Service accepted June , 1860.
(Signed) J. M. TALMAGE,
Att'y for A. H. Davenport.

Cook & Drury, att'ys for A. Le Claire.

352 *Affidavit of A. H. Davenport denying collusive contract with A. Le Claire.*

District court Scott County.

ANTOINE LE CLAIRE
vs.
A. H. DAVENPORT ET AL.

STATE OF IOWA, *Scott County, ss:*

Adrian H. Davenport, one of the defendants in the above-entitled action, being duely sworn, deposes and says that since the deposition of Charles Powers was taken in the case of George L. Davenport vs. James May, he has made no arrangement or agreement with Antoine Le Claire, or with any other person for him or on his behalf, by which the property described in the petition in the above-entitled action is to be sold & purchased by any parties in order to baffle the said May and prevent him from acquiring the mortgage and notes upon which the same is brought on the proceeds thereof; that he has at no time whatever made any such arrangement or any arrangement similar thereto.

(Signed) A. H. DAVENPORT.

Subscribed & sworn before before me this 21st day of June, A. D. 1860.

[SEAL.] (Signed) JAMES B. WARE, *N. P.*

353 (Indorsed:) Copy. District court, Scott County. Antoine Le Claire vs. A. H. Davenport. One affidavit of A. H. Davenport.

Filed July 3rd, 1860.

(Signed) GIFFORD, *Clerk.*

Israel Talmage, att'y for A. H. Davenport.

354 In Scott' dist. court.

ANTOINE LE CLAIRE
vs.
A. H. DAVENPORT ET AL.
} Court's decision on May's application.

The application of James May to become a party defendant to the proceedings in this case is granted, and he has leave to file an answer or cross-bill or both.

His application to set aside the decree by consent aganst Davenport is refused, for the reasons:

1st. There is no showing that he has performed the contract by which the notes and mortgage in question were to be his.

2nd. There is no good reason shown why his cross-bill was not filed before the decree by consent was entered. An answer merely would do May no good.

The original is scratched and crossed as in this copy.

3rd. There is no allegation or pretence that Le Claire is insolvent & not able to respond to May in damages for any violation of the contract between him and May.

4th May's rights are not affected by the decree, he being no party to the proceedings.

If he has rights he can file an original bill, and if entitled, he may

have an injunction to restrain any assignment of the decree or any sale under it by Le Claire.

355 5th. May admits that he is disabled from performing the contract with Le Claire, but claims that he was fraudulently disabled by Le Claire. Though a long time has elapsed he has taken no available affirmative steps to settle the rights under that contract or remove the disability. In the present situation of the case, in view of the fact that May is not bound by the decree, that he has a complete remedy by original bill, and that Le Claire is able to fully respond in damages if May is right, and he wrong, I do not think that May can equitably demand, without the security or bond which he would have to give, if he applied for an injunction, that there should be no foreclosure of the mortgage in this case until the alleged equities between him and Le Claire can be settled by a protracted litigation in chancery. I can readily see how Mr. Le Claire's rights as the mortgagee in this case could be seriously affected if this course were permitted.

(Signed) JOHN F. DILLON, *Judge.*

356 (Indorsed:) A. Le Claire vs. A. H. Davenport et al. Court's decree on May's application.

Filed August 14, '60.
(Signed) GIFFORD, *Clerk.*

357 (In J. P. Cook's handwriting, in pencil.)

ANTOINE LE CLAIRE
vs.
ADRIAN H. DAVENPORT. } In equity to foreclose mortgage.

And now comes the said complainant, by Cook & Drury, his solicitors, and move the court for a decree against the remainder of said defendants, who are in court, to wit, Paul S. Chandler, S. G. McIntire, Corbin & Dow, Richard Bard, T. Pfiner, James Farr, E. Flaxht, Wm. F. Gault, H. Metcalf, H. Schleffel, Mitchel & Cable, James Jack, E. Mohler, C. H. Stacey, I. Rapp, S. B. Hopkins, I. Schortmiller, Andrew Jack, J. Starkie, Simon Arnold, Peter Smith, J. G. Huntingdon, H. Scholler, Alvis Anderholton, Christian Zenna, G. L. Davenport, Fred. Weyhe, Le Claire, Davenport & Co., Knight, Prescott & Co., Joseph A. Le Claire, Maggie Lischt, Jewett, Tibbetts & Co., O. Lobhart, Wm. Vantyle, Moore & Smith, A. J. McCreary & Co., R. G. Morgan, T. C. Eads, Sam'l Elliott, Thayer, Hart & Co., Thomas Crawford, Trego & Woodruff, Richard Chennell, Foster & Stahl, Eli Smith, Klinger & Fredinand, J. W. Buckman, Collins, Kellogg & Kirby, J. C. Barnes, C. M. McClung & Co., J. A. & W. J. Steel, D. A. January & Co., Maria L. Davidson, Farrington & Stephens, George Clannell, E. Smith & Co., J. H. Suiter, E. A. & S. R. Filley, Miller & Scott, E. W. Green & Co., Rudolph Morand, R. H. Rogers, M. Disney, Johnson & Lewis, James Coe, H. Closterman; and it appearing that the foregoing-named defendants have all been served with process or otherwise properly brought into court, and that they have failed to appear and answer on demurrer, but herein make default. And it further appearing that the complainants lien and claim is for purchase-money for the same real estate mentioned in said mort-

358 gage, and superior to any of said defendants.

It is now finally ordered and decreed by this court that parties made defendants in said petition, to wit, the said parties hereinbefore

mentioned, be, and they are hereby, forever bound and foreclosed from setting up any claim, right, or title to said real estate described in said mortgage, either in law or equity, except such as have heretofore acquired title by purchase and payment of the purchase-money, either to the said Le Claire, or the said A. H. Davenport; and it is further ordered and decreed that such of the parties as hold title bonds from the said Le Claire or the said Davenport, and have not yet paid the purchase-money for lots or tracts of land described in their respective bonds shall pay any ballance now due by virtue of said bonds, in thirty days from this date, or in default thereof forfeit all right and claim to any of the real estate described in said mortgage, and said bonds shall be of none effect. And it having heretofore been decreed by this court, as between said complainant & the said A. H. D., that all of said property be sold
359 in default of payment, as in said decree mentioned, now it is finally ordered, adjudged, and decreed that a special execution issue against all of the property described in said mortgage, except such as has been deeded to parties by said Leclaire; and that in selling, the sheriff of said county first sell such of the property as has not heretofore been sold by the said Davenport.

(Indorsed:) Le Claire vs. Davenport et al. Not to be entered until after 9 mo. (62.)

360 ANTOINE LE CLAIRE
vs.
ADRIAN H. DAVENPORT ET AL.

Be it remembered that heretofore, to wit, on the 24th day of April, A. D. 1860, the said plantiff filed in this court his bill of complaint against the said Adrian H. Davenport and other, praying a foreclosure of the said mortgage specified in said petition. And afterwards, to wit, at the June term, A. D. 1860, of said court comes the said Adrian H. Davenport, and files his answer to said petition admitting the execution of said mortgage and promisory notes; and for answer in this behalf saith he cannot deny the allegations in said petition, and now here in open court confesses the claim of said plantiff, and submits to this honorable court that a decree may be entered pro confesso, according to the prayer of said petition; wherefore the court then and there ordered that the said bill be taken as confessed, and that a decree entered accordingly. And afterwards, to wit, the same day, and after a decree pro confesso had been so entered by the said court, one James May, by his solicitors Parker & Edwards, appeared and filed a motion and an informal bill, asking to be made a party to this suit, which motion the court then and there took under advisement. And afterwards, to
361 wit, on the first day of the present (August) term of this court the said court order, decree, and adjudge that said James May may make himself a party to this suit; but in so doing the said decree pro professo shall not be discharged, and that the said Antoine Le Claire is entitled to a final decree and foreclosure of said mortgage as against the said Adrian H. Davenport. It is therefore ordered, adjudged, and decreed by this court that the said petitioner take his decree of foreclosure, and that the clerk of this court assertain by computation the amount due on the said promisory notes secured by the said mortgage. And afterwards, to wit, on the 22nd day of August, A. D. 1860, the clerk of this court finds and reports to the court that the principle and interest upon said promisory notes amounts to the sum of

forty-one thousand seven hundred and eight dollars and thirty-two cents, ($41,708$\frac{32}{100}$.)

And the said court, being satisfied from the proofs and exhibits, and the answer of the [of the] said Adrian H. Davenport, that the said notes were made, executed, and delivered to the said plantiff for the purchase-money of the real estate described in the said mortgage, do further adjudge and decree that the said Antoine Le Claire have and recover of and from the said Adrian H. Davenport the said sum
362 of forty-one thousand seven hundred and eight dollars and thirty-two cents, ($41,708$\frac{32}{100}$,) with interest thereon from this day until paid, at the rate of six per cent. per an'm, and that in default of the payment of said sum, that a special execution issued against the real estate in said mortgage described, to wit, the tract of real estate lying and being situated in the county of Scott and State of Iowa, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire, known as Le Claire's reserve, that has not been by the said Le Claire conveyed heretofore, being the property conveyed by the said Le Claire to the said Davenport by his deed of bargain and sale bearing even date with and executed simultaneously with said mortgage, commanding the sheriff of said county to sell the same according to law; and that the said Adrian H. Davenport, his heirs and assigs, and all persons claiming by, through, or under him, be forever barred and foreclosed from ever setting up any claim, right, or title to the said described real estate, whether in law or equity; and in default of said real estate selling for enough to pay the amount of this judgment and decree, and the costs of this proceeding, which is taxed at $, then and in that case the plantiff shal have execution for any residue
363 as upon judgment at law.

And as to the other defendants in this case who claim to hold any portion of real estate by virtue of any contract with either the said plaintiff or the said Adrian H. Davenport, the court will further order and decree.

(Indorsed:) 5697. Antoine Le Claire vs. Adrian Davenport et al. Decree. (305.)

364 By virtue of the within writ of execution, and in pursuance thereof, I have this 9th day of April, 1861, levied upon the following-described real estate, lying and being situated in Scott County, Iowa, to wit: All thart part of a piece of land lying within the present limits of the city of Le Claire, known as Le Claire's reserve, that has not been by the said Le Claire heretofore conveyed, (meaning before the 7th day of May, A. D. 1857,) being the property conveyed by the said Le Claire to the said Davenport by deed of bargin & sale, bearing date the 7th day of May, A. D. 1857.

Said real estate is laid out in lots, blocks, and out-lots, and will be sold in parcels as shown by the recorded plot of A. Le Claire's addition to the city of Le Claire.

And as a further return upon this writ of execution I certify that, on this 9th day of April, 1861, I advertised the same for sale at public outcry, at the court-house, in the city of Davenport, in said Scott County, Iowa, on Saturday, the 18th day of May, 1861, at the hour of 9 o'clock a. m. of said day, by posting printed notices giving the time and place of said sale, as above designated, in three public places in said Scott County; one of said notices being posted at the door of the court-house of said Scott County, where the last district court was held in and

365 for said county, to wit, in the city of Davenport, and one at the post office in said city of Davenport, and one of said notices being posted in a public place in Le Claire Township in said Scott County, wherein the [the] said real estate is situated; and in accordance with the statute in such cases made and provided, I advertised the said sale of the said real estate in the Davenport Democrat & News a newspaper published in the city of Davenport, in said Scott County, for the space of four weeks prior to said sale, the same being a copy of the notices posted as aforesaid, and I further certify that I have on this 19th day of April, A. D. 1861, that being at least 20 days previous to the 18th day of May, A. D. 1861, served the defendant A. H. Davenport, and also served J. R. Morgan, J. Buckman, Thos. Crawford, J. G. Stacey, John Huntington, Jas. Coe, Eli Schrusets, R. Morand, and A. Ruderhalter, each with a written notice stating that I have levied this execution upon the premises above described, and mentioning the time and place of sale of said property as above specifyed, and as a further return upon this writ I certify that on Saturday, the 18th day of May, 1861, at the hour of 9 o'clock a. m. of said day, at the door of the court-house of said county, that being the time and place of said sale as adver-
366 tised by said notices aforesaid, a copy of whitch is attached to the execution in this case, I did offer for sale the above described real estate at public outcry, in lots and blocks as subdevided and shown by a plat as an addition to the city of Le Claire, but no person would offer or bid any sum for any of said lots or blocks, nor for any portion of said premises less than the whole; whereapon I did then and there offer for sale the whole of the property mentioned in said decree, and did then & there sell the same at public auction to Antoine Le Claire, for the sum of twenty thousand dollars, ($20,000,) he being the highest and best bidder therefor in cash, the same was struck off to him as the purchaser thereoff.

Dated this 18th day of May, A. D. 1861.

JAMES THORINGTON,
Sheriff of Scott Co., Iowa,
By H. H. ANDERSON, *Dep.*

Sh'ff account.

Levy	2 00
Ad	
Post. not	4 00
G. not	8 15
Sal & deed	2 00
½ com	103 50
	$119 65

Sh'ff acc. cost except bills for advertisments paid.

367 *Special execution.*

STATE OF IOWA, *Scott County, ss:*

The State of Iowa to the sheriff of Scott County, greeting:

Whereas, Antoine Le Claire, plaintiff, heretofore filed a petition in the district court of said Scott County for the foreclosure of a certain mortgage upon the real estate hereafter described, making Adrian H.

scribed property as has not herebefore been sold by the said Davenport.

Dated this 9th day of April, A. D. 1861.

JAMES THORINGTON,
Sheriff of Scott County, Iowa.
COOK & DRURY,
Plaintiff's Attorneys.

ap 11—wts]

375 (Indorsed:) Copy special execution, No. 5697. Antoine Le Claire vs. A. H. Davenport et al. Rec. 7, p. 305, Ex Doc. 6, p. 317. Entered sales book 1, p. 297.

Damages	41,708 32
C. costs	5 50
Sh'ff	
Execution	50

657. Cook & Drury. Copy.

Rec'd April 9th, 1861, at 4 o'clock p. m.

JAMES THORINGTON, *S'ff.*
By H. H. ANDRESEN, *D'p't.*

376 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full, true, and complete transcript of the record and of the papers in the above-entitled case, as appears from the original on file in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at office in the city of Davenport, in said county, this 4th day of November, A. D. 1862.

[SEAL.]

IRA M. GIFFORD,
Clerk District Court Scott County, Iowa.

377 (Indorsed:) No. 1. Antoine Le Claire vs. A. H. Davenport et al. Foreclosure as connected with suit of May vs. Le Claire et al.

378 No. 30.

Inventory of property of Cook & Sargent, and Sargent & Dixwell, Ebenezer Cook, George B. Sargent, John P. Cook, John C. Davie, and of Geo. B. Dixwell's interest in the firm of Sargent & Dixwell—Geo. L. Davenport, J. Wilson Drury, assignees—under an assignment made January 23d, 1861.

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Date of note.		Amount.	Estimated value.	Due.
	Bills receivable:			
1856, Mc'h 8	Asmussen, Chas. W.	162 60	25 00	Past due.
1852, Apr. 6	Arniell, Leveritt, ac.	8	0 00	"
" Dec. 9	Andrews, Burr	2,467 39	0 00	"
1854 Aug. 21	Brulin, Adolphus	20 —	0 00	"
1853, Sep. 4	Belken, Henry	50 —	0 00	"
1859, May 12	Ball, John R. C.	494 82	0 00	"
" " "	do	494 82	0 00	"
1860, M'ch 21	Boles, Leander	66 —	0	"
1860, Sep. 3	Borrows, B. A.	750	250 —	3-6 Sep., '61.
1857, Dec. 15	Burtes, J. J.	1,500		Past due.
1858, May 24	do.	5,000		"
" Aug. 20	do.	156 31		"
" " "	do.	156 31	2000 —	"
" " "	do.	156 31		"
" " "	do.	156 31		"
" " "	do.	156 31		"
	in suit.			
1859, Feb. 21	Burrows & Prettyman	375		"
1856, July 17	do.	250		"
" " "	do.	250	0 00	"
" " "	do.	250		"

" July 28	Crary, D. B.	106 35	0 00	"
1857, Aug. 20	Crandall, Jos. A.	436 34	0 00	"
1859, " 30	Channar, Wm	33 92	10 00	"
" M'ch 22	Conway, Joseph	250	20 —	"
1860, M'ch 3	Clark, W. T.	181 06	100	3–5 M'ch, '60.
" " "	ditto	1,444 49		
1858, May 22	Cannon, John M.	75 —	0 00	Past due.
" Nov. 20	Cannon & French	2,823 90		"
380				
1858, Sep. 4	Cannon & French	3,000	offset	Past due.
" " "	do	4,000	0 00	"
1857, Jan'y 15	De France, H. A.	800	0 00	"
" M'ch 24	ditto	25	0 00	"
1858, M'ch 30	ditto	323 47	0 00	"
1859, Oct. 4	Disney, Hewitt & Co.	300	0 00	"
" Dec. 24	Davenport, Geo. L.	990 72	offset	
1853, May 23	Evans, John D.	52	25 00	"
" Feb. 25	ditto	153 98		"
1859, Sep. 28	Edwards, Alfred	500	250 —	"
1858, Jun. 12	Fairbanks, L.	5 20	0 00	"
1856, Aug. 6	Howard, S. H.	40 —	0 00	"
1867, Apr. 7	Harrington & Wilkie	100	0 00	"
1859, Jan. 4	Hewitt, W. H., Eas'd att. Davenport	412 51	0 00	"
1857, Feb. 23	Havill, G. C.	12 —	12 00	"
1858, Jan'y 27	Johns, John	500 —	0 00	"
1859, Sep. 23	ditto	25 —	0 00	"
1858, July 14	Jordan, John	631 61	0 00	"
1860, Jan'y 14	Kroeger, Adolph	1,246 12	0 00	"
1859, Aug. 31	La Franz	8	0 00	"
1860, Feb. 23	Lomas, Thomas	149 03	0 00	23–26 Feb., '61.
1859, Apr. 28	Mackintosh, James	80 —	0 00	Past due.
1855, Oct. 5	Meyers, Jacob	50 —	0 00	"
1857, Aug. 3	Mohler, H. C. Ch	150	0 00	"
1859, Jan. 4	Mason, H. E.	9 46	0 00	"
1860, June 16	Macklot & Corbin, (conditional)	28 47	0 00	"
1854, Feb. 6	McKowen, Gilbert	10	0 00	"
1856, June 10	Macey, Geo. F.	50	0 00	"
" " "	ditto	50	0 00	"

381

Date of note.		Amount.	Estimated value.	Due &.
	Bills receivable—Cont'd:			
1859, May 12	M'Gee & Co., J. W., acceptance Jno. R. Ball & Co., d'f't.	494 82	0 00	Past due.
" " "	ditto	494 82	0 00	"
1855, Feb. 14	Nightingale, Geo. L.	100 —	0 00	"
1858, June 28	O'Brien, Patrick	26 —	0 00	"
1857, June 1	ditto — Secured by lot 11, B. 1, Co. S, 2d addition.	150	0 00	"
" " "	ditto — Secured by lot 11, B. 1, Co. S, 2d addition.	150	150	"
" " "	ditto — Secured by lot 11, B. 1, Co. S, 2d addition.	150		"
1860, Aug. 20	Price, M. M., rec't for note	200	100	"
1858, M'ch 25	Parker & Spearing	312	0 00	"
1859, Apr. 28	Parker, Geo. W.	45	45 —	"
1855, Dec. 26	Ross, Joseph B.	50	0 00	"
1858, Jun. 19	Ross, Ayres	30 45	30 45	"
1859, June 16	Reed, P. R. Prundt	3 —	3 —	"
1859, July 14	Rumbold, James, jr.	22 17	0 00	"
1856, Feb. 20	Swanch, N. C.	480 78	0 00	"
1852, Feb. 25	Steffenbel, Franz	interest	0 00	"
1857, Jan. 3	Thorington, John H.	349 88	0 00	"
1859, M'ch 7	Thorington, James	1,224 84	0 00	"
1857, Aug. 4	Terhune & Grout	2,687 44	0 00	"
1858, Jan. 8	Timmerman, C. B.	15 —	0 00	"
" M'ch 15	Vandazee, Wm	43 12	20 00	"
1859, Nov. 5	Van Tyle, Wm.	2,335 56	0 00	"
" " 26	ditto	3,514 37	0 00	"
1857, Feb. 5	Webber, L. M.	505	0 00	"
" " 12	Woodburn, R.	330	0 00	"
1858, M'ch 19	Wilkee, F. B.	30	0 00	"
1855, July 18	Witherwax, J. M.	94 38	0 00	"
382				
1854, Nov. 28	Ackerman, Sanford	7 75	7 75	Past due.
" July 3	Echart & Balto	100	0 00	"
1855, May 7	Vanhorn, James	17 50	0 00	"
" " 14	Wood, John	27 53	0 00	"
		$46,062 71	$3,048 20	

		Amount.	Estimated value.	
	Special bills receivable:			
1859, Jan'y 21	A. B. Henry, end. by Burrows & Prettyman	113 46	0 00	Past due.
1858, " 26	John Johnson ....do	509 94	0 00	"
" Dec. 27	Thomas O'Brien....do	9 39	5 00	"
1856, July 9	Jacob Rhodte....do	8 25	0 00	"
1858, Sep. 25	Ambrose Sloper....do	36 39	0 00	"
" " 4	George E. Wilson....do	34 54	0 00	"
1860, Jan'y 17	John P. & Conrad La Grange	600 —		"
" " "	....ditto	600 —		17-20 Jan'y, '62.
" " "	....ditto	600 —	1,000 00	" " '63.
" " "	....ditto	600 —		" " '64.
" " "	....ditto	600 —		" " '65.
1857, Oct. 26	J. M. Witherwax, 2, end'd by Prettyman &			Past due.
" July 1	Burrows.	250	0 00	
1856, Dec. 26	Geo. A. Kline, end. by Jno. D. Burrows	175	0 00	"
	Richard Gittings	89 48	30	"
		$4,296 45	$1,035	
	Notes received from E. Cook & Geo. B. Sargent:			
	Jno. Than's, 2 notes, value 1 Oct., '55	50 32	50 32	Past due.
1857, Sep. 15	James U. Reynolds	73 79	0 00	"
		$194 11	$50 32	

383		Amt.	Est'd value.	
	Notes received as collaterals from Burrows & Prettyman:			
1858, Feb. 4	Nicholas Blocker, end'd by B. & P.	363 35	0 00	
" May 27	Matthew & Bert ..."	2 28	0 00	
" Jan'y 8	Baxter & Keith ..." ..& D.	109 25	0 00	
" Feb. 6	Wm. N. Hammond ..."	26 61	0 00	
1856, July 19	J. W. Johman ..."	75	0 00	
1858, Feb. 9	Jamie, Donnelly & Lea..."	138 50	0 00	
" May 22	Peter Kuhl ..."	149 69	25 00	
" Apr. 1	W. S. Moulsin ..."	144 46	0 00	
" Feb. 16	Richard Gittings	28 91	5 00	
		$1,038 05	$30 00	
	Collaterals from David A. Burrows, end'd by him:			
1857, Dec. 1	Smythe & Gore	214 26	0 00	1-4 June, '60.
" " "	....do	214 26	0 00	1-4 Dec., '60.
" " "	....do	275 49	0 00	1-4 June, '61.
" " "	....do	275 49	0 00	1-4 Dec., '61.
" Nov. 18	H. Levin & Jno. Levin	223 67	0 00	18-21 Nov., '60.
" " "	....do ....do	240 87	0 00	" " '61.
		1,444 04	0 00	
	Notes rec'd from assets of Chubb Bro., Barrow & Co., & Wickersham & Williams:			
1857, Sep. 5	Ames, Alfred H	7 00	0 00	Past due.
1856, Dec. 30	Burrain, Cornelius	166 68	0 00	"
1857, Aug. 29	Brunner & Cassell	262 05	0 00	"
" Sep. 1	....ditto	76 93	0 00	"
" Aug. 29	....ditto	262 05	0 00	"
384				
1857, Apr. 13	Collins, P., & Tragner, P	26 00	0 00	Past due.
" July 7	Coyle, Perry	26 18	0 00	"
1858, Feb. 12	Cotes & Patchero	187 37	0 00	"
1857, Jan'y 29	Center, L. J., & Harrington, J. S	30 —	0 00	"
1856, Aug. 23	Denison, Henry S	9 —	0 00	"
" Sep. 5	Farrar, John	35	0 00	"
" " "	....ditto	380	0 00	"
" " "	....ditto	325	0 00	"
" " "	....ditto	325	0 00	"
" " "	....ditto	325	0 00	"
1857, Jan'y 13	Galligan, John	6 —	0 00	"
1856, May 6	Hedde, Fred'k	60	0 00	"
" " "	....ditto	100	0 00	"
1857, Sep. 1	Holmes & Berden	365 67	0 00	"
" Aug. 17	Harrington & Wilkie	40 —	0 00	"
" Jan. 24	do & J. L. Harrington	25	0 00	"
" " 1	John, Henry	35 86	0 00	"

" M'ch 30	Langer, Dr. Ignatius	89 55	00 0	"
" Jan'y 8	.....ditto	136 40		"
		3, 294 04		
" " "	.....ditto	131 63	0 00	"
" Sep. 26	Mills, James K. & Co	2, 000	0 00	"
1858, Jan. 30	Mills, James K	380	0 00	"
" " "	.....do	500	0 00	"
" " "	.....do	700	0 00	"
" June 29	Mills, Jas. K. & Co., & J. K. Mills	320	0 00	"
1857, M'ch 31	Munroe, James	200	0 00	"
" " 16	Miller, C. S	64 26	0 00	"
1856, Apr. 23	Maddocks, Joseph	51 00	0 00	"
1857, Aug. 21	Nourse, John R	816	0 00	"

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Date.		Amt.	Estimated value.	
1858, Jan. 7	Propet, Adam	67	0 00	Past due.
" Apr. 22	Parker & Spearing	75	0 00	"
1857, Oct. 24	.....ditto	200	0 00	"
1856, July 24	Phillips, David T	34 91	5 00	"
1856, Dec. 26	Randolph, David	25	5 00	"
1857, Aug. 22	Thorington, James	100	0 00	"
1856, Nov. 28	Willett, E. W., jr	10	0 00	"
1857, Apr. 25	Wilckans & Wierum	39 84	0 00	"
1858, Aug. 4	Kirkendall C. H., & Kilbourn Hallet	78	0 00	"
		$9, 087 68	$10 00	
	Judgements made in favor of Cook & Sargent :			
1858, Aug. 28	Jacob W. Hoering			
	Conrad Steinhelber	150	40 00	
	L. Barner			
1857, June 30	George G. Arndt	200	00	
1858, Oct. term	Leveritt Averill	100	00	
" " "	M. Burns & George G. Arndt	35	00	
" " "	Cecilia Brannish	1, 100	100	
" " "	H. G. Dwire	387 85	000	
" " "	F. H. Fitzpatrick	273 50	00	
" " "	John Rich Jackson	211 60	00	
" " "	John Johnson	204 90	25	
" " "	Wm. Lovell	165 15	50	
" " "	Renwick & Son & Allen & Cark	1, 400	50	
" " "	John J. Trucks & Wm. Lovell	90 75	30	
" " "	Jacob Rhode & H. C. C. Moller	125 65	00	
" "	Benjamine Armstrong	40 90	40	

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	Judgements, continued :			
1858, Oct. term	John Benshoff, jr	91 23	40	
" " "	.....ditto	66 35	30	
" " "	W. S. & H. E. Brown	174 23	50	
" " "	C. B. Blocker	222 87	00	
" " "	N. Blocker & Carl Boeck	185 53	00 00	
" " "	C. Blocker, & T. Book, & C. Louisfield	124 53	00 00	
" " "	A. B. Cox	387 03	00 00	
		5, 737 07	455	
" " "	V. S. Carter	266 21	00 00	
" " "	Jacob Laughaine & A. Wagner	98 84	00 —	
" " "	Sanford Ackerman	155 12	0 00	
" " "	H. Atwood & E. Stevenson	110 21	50 00	
" " "	Dettef Baker & H. J. Jacobsan	175 68	25 00	
" " "	C. Casper & Wm. Penn	68 62	25	
" " "	Chas. F. Dittell	665 70	0 00	
" " "	J. M. English	341 90	25	
" " "	Michael Glym	25	25	
" " "	F. Grise & J. P. Koch	200	50	
" " "	H. H. Moore	94 52	0 00	
" " "	George W. Snively	172 74	0 00	
" " "	James K. P. Baker	21 68	20	
" " "	Otto Henning	78 90	25	
" " "	Timothy Griffin	48 98	20	
" " "	James A. Hire	124 35	0 00	
1857, Aug. 23	J. Langheim	126 30	0 00	
" Apr. 16	D. K. Allen & R. K. Allen Wm. Doolan & M. H. Doolan	374 50	0 00	
1857, Nov. 17	Burnell, Gillett & Co., S. Burnell Burnell, Gillett, & Jos. Lambrite	7, 751 53	0 00	

387 Date.		Amount.	Estimated value.
	Judgements, continued:		
1857, Oct. 31	Jas. Anthony, jr.	61 73	30
" Nov. 4	Nicholas Nuthe	50 26	0 00
" " "	Isaac Acher, & Gis Acher	122 88	50 00
" " "	C. H. Holmes	42 02	10
" " "	Stephen H. Green	34 90	0 00
		16,979 94	835
" " "	Jane P. Cooper	76 57	0 00
" " "	Christopher Wiseawer	67 75	0 00
" " 9	John Hempner	40 25	0 00
" " 4	Hans Hass	92 15	0 00
" " "	E. G. Outhong	114 52	0 00
" " "	Jacob Rohde	149 40	0 00
" " "	Joseph Waldo	43 78	10 —
" " "	C. & L. Blocker	124 56	0 00
" " "	G. H. Olinger	176	50 —
" " "	Henry Iske	54 85	10 —
" " "	Hans Jons	38 80	10 —
" " "	Frank Scheppe	64 22	15 —
" " "	H. M. Clarke	51 52	15 —
" " "	R. H. Randall	104 82	0 00
" " "	Adam Probst, Jno. & P. Wertz	791 12	150 —
" " "	David C. Meyers	673 66	150 —
" " "	Hans Schumacker	53 51	15 —
" " "	Catherine McIntyre	137	40 —
" " "	Chubb Bro., Barrow & Co	10,000	0 00
1858, Oct. term	Jackson Buchanon	15	15 —
" " "	John Hughes	33 82	25 —
" " "	Daniel Hewitt	38 68	10 —
" " "	John Little	51 08	15 —

388		Amount.	Est'd value.
	Judgements, continued:		
1858, Oct. term	Sam. W. McCain	77 45	30 —
1859, Oct. "	Garrett McQuillen	159 37	100
1858, Oct. "	E. McLeran & L. B. Harrington	52 75	0 00
		$30,232 51	$1,495
1858, Oct. 1	T. McKnowlin & Jno. Frazier	21 60	20 —
" " "	John S. O'Reardon	73 92	0 00
" " "	Osias Olds	28	0 00
" " "	Hans Playmaux	73	0 00
" " "	C. Blocker, T. Boek & Co., Louisfield	64 16	0 00
" " "	E. T. H. Eyser	57 50	0 00
" " "	Lerjart Kard	52 55	0 00
" " "	John Pleon	36 12	0 00
" " "	John B. Robeson	26 11	5 00
" " "	John Shuck	26 06	0 00
" " "	John P. & A. J. Trucks	28 70	10 —
" " "	Christian Hook	81 96	20 —
" " "	Henson Williams	33 30	0 00
" " "	Geo. R. Wolfe	33 40	10 —
" " "	Nicholas Willey	19 38	0 00
" " "	John P. Wertz	64	15 —
1859, Nov. 11	Christian Thodt	12 20	5 —
" " "	John Stratton	13 —	5 —
" " 7	W. Schlemme	16 70	5 —
" Dec. 20	F. Kohler	13 78	5 —
1860, Feb. 9	J. M. Witherwax	128 60	0 00
" " "	A. Littig	151 55	0 00
" " 14	G. G. Arndt	366 41	0 00
" " 18	Sam. Callen	283 65	0 00
1859, June	Wulff H. Anderson	348 63	0 00
		$32,286 59	$1,595 —
389	Forward	$32,286 59	$1,595 00
	Judgements, continued:		
	P. S. Gillett & Co., and Wickersham & Hicks		0 00
1859, May 6	Cannon & French $16,375		
	L. on real estate 2,645	13,730	0 00
		46,016 59	$1,595 —

		Amount.	Estimated value.	
	Collateral from James W. Cannan:			
	Geo. Fisher's note past due	30	0 00	
	Collateral note from F. H. Fitzpatrick:			
	D. M. Adams	90	0 00	
	Collateral notes, &c., from J. M. Witherwax			
	Sam'l Gay & Wm. Gay, past due	100	0 00	
	Sam'l Milter "	50	0 00	
	M. H. Lake "	132 74	0 00	
	G. W. Barnes "	223 —	0 00	
	C. B. Connor "	113 89	0 00	
	James Wickersham, Jno. D. Hicks	49	0 00	
	Wm. McInnery	50	0 00	
	C. G. Blood	150	0 00	
	No. 147 school-house order	19 54	17 68	
	No. 175 ditto	20	18 —	
	No. 176 ditto	10	9 —	
	No. 177 ditto	10	9 —	
	No. 178 ditto	10	9 —	
390	No. 179 ditto	10	9 —	
	No. 180 ditto	39 82	29 86	
		$988 09	$101 54	
	Collateral notes from Cannon & French, endorsed by them			
1858, Feb. 2	Butler, M. V	187 51	0 00	Past due.
" Oct. 14	Bleyer, Marris & Anna	37 67	0 00	
" Nov. 30	Betts, John	28 47	0 00	
1859, Feb. 18	Bradley, L	62 31	0 00	
1858, June 1	Brown Thomas	31 50	0 00	
1859, M'ch 7	Cannon, James U	234 72	0 00	
" Feb. 19	Fisher, George	15 75	0 00	
" " 21	Kahren, H	3 90	0 00	
" " 25	Gerbritz, J. D	45	0 00	
1858, July 21	Houtman, F., & Mekraus, Hans	84 39	0 00	
" Oct. 8	Hornbrecht, J. B	15 50	0 00	
" Jan'y 7	Itens, Anton	66 72	0 00	
1857, May 20	Isley, Barnet	32 32	0 00	
1858, Oct. 8	Johnston, Edward T	6 00	0 00	
1859, Feb. 18	Judd, A	14 52	0 00	
1858, July 29	Kniphals, H	9 73	0 00	
" M'ch 3	Kohlbrie, L., & others	19 35	0 00	
1857, Apr. 1	Langer, Dr. Ignatius	970 90	0 00	
1858, July 8	Mead, Enoch	250	0 00	
" Oct. 18	Pa er, Charl	57 48	0 00	
" Jan'y 1	Pickens, Chas., & Sanders, S. R	24 56	15 —	
1857, June 1	O'Brien, Patrick	129 88	0 00	
1858, Nov. 18	ditto	6 30	0 00	
" Oct. 27	Smith, David H	50	0 00	
" Apr. 21	Houtman, H. C., & Seidler, F	34 70	0 00	

391		Amount.	Estimated value.	
1857, Aug. 28	Weiram, John	377 59	0 00	
" Nov. 14	Weighe, Louis	145 63	0 00	
		$2,942 70	15 —	
	Deposite accounts:			
	Burtis, J. J	37 32	0 00	
	Buckmuller, C. & C	21 86	0 00	
	Damatt, J., senior	96 43	0 00	
	Dries, H. C	228 58	0 00	Offset.
	Doolan, Wm	225 90	0 00	
	Finley, H. S	45 97	0 00	
	Finley & Dwire	97	0 00	
	Gilbert, E. S	229 82	0 00	
	Guiteau, J. W	32 58	0 00	Offset.
	Do do., clerk, &c	26	0 00	"
	Haven, F., jr	1,807 75	0 00	"
	Johns, John, & Co	295 71	0 00	"
	Kuhnen, N., & Co	16 90	0 00	Garnished.

	Langer, Dr. I.	17 87	0 00	
	Lane, James T.	2 93	2 93	
	Leonard, Harvy.	265 43	0 00	Offset.
	Lowry, Robert.	219 83	219 83	
	Merwin, Phineas.	56 39	0 00	
	Moore, D. H.	79 50	30 00	
	Rowe, V. B.	17, 057 83	1, 500 —	When settled this amount will probably be due.
	Rowe & Hyde.	9, 785 40	1, 000 —	
392	Saloman, J.	56 45	0 00	
	Schenk, E. T. S.	424 33	0 00	
	Weaver, Jos., treasurer.	662 50	0 00	
		31, 767 54	2, 752 76	
	Witherwax, J. M.	486 44	0 00	
	Sundry ac's in depositor's leger:			
	Soutter, J. J.	126 67	0 00	
	Tuenwell & Mount.	24 43	0 00	
	Davis, Boyd & Co.	257 88	0 00	
	Shorey, S. C.	106 60	0 00	
	Parkhurst, W.	3 56	0 00	
		32, 772 12	2, 752 76	
	General leger:			
	Allen, W. H.	112 04	0 00	
	Anderson, John J., & Co.	769 53	0 00	Offset.
	Bank of Florence.	614 55	0 00	
	Bryan, B. Sole.	4, 850 81	1, 000	Pleged.
	Chubb Bro., Barrow & Co.	3, 988 07	0 00	
	De France, H. A.	2, 398 18	0 00	Offset.
	Hatch & Langdon.	25 88	0 00	
	Hayes, F. B.	2 52	0 00	
	Machenzie, James S.	104 45	104 45	
	Marshall & Drury.	3, 165 18	0 00	Offset.
	Perin, Frank.	2, 707 79	500 —	
	Smith, Geo., & Co.	1, 840 88	0 00	Offset.
	Carried forward.	20, 579 88	1, 504 45	

393		Amt.	Estimated value.	
		20, 579 88	1, 504 45	
	General leger, continued:			
	Sweeny, Rittenham, Tant Co.	7 00	0 00	Disputed.
	From sundry ac's:			
	Fisher, Samuel H.	467 75	0 00	
	Campbell, J.	1 50	0 00	
	Restine, H.	9 25	0 00	
	Sampson, A.	3 00	0 00	
	Piper, Cyrus, jr.	3 70	0 00	
	Price, Hiram, treas'r.	8 73	0 00	Disputed.
	Lyell, J. L.	548 03	0 00	
	Stunz, G. R.	37 50	0 00	
	Rhoades, Jane.	7 40	0 00	
	Hasbrook, G. B.	5 35	0 00	
	Gardner, Jas. A. Greare.	7 00	0 00	
	Dodge, Le Roy.	96 —	0 00	Offset.
	Le Claire, A.	1, 400	0 00	Offset.
	Arrison, T. S.	7 75	0 00	
	Sprant.	33	0 00	Offset.
	De Motte, M.	35	0 00	
	Bird & Sprague.	15	0 00	
	Krum, Chauncey.	5, 000	0 00	Offset.
		26, 275 84	1, 604 45	

394		Amount.	Estimated value.	
	Tax receipts:			
	Russell & Briton	8 68	0 00	
	Walter, M. M	21 52	0 00	
	Wemott, T. T	9 97	0 00	
	Aytward, N	7 20	0 00	
	Smith, E. S	25 64	0 00	
	Hudson, Jas	7 20	0 00	
	Jordan, Jno	13 20	0 00	
	Stanchfield, Samu	12 12	0 00	
	Moore, Jno	24 95	0 00	
	Kroeger, A	20 48	0 00	
	Blake, S. P	95	0 00	
	Gue, Mary C	3 —	0 00	
	Durant, F. C	1 —	0 00	
	Sargent, Jno. O	27 04	0 00	
		182 05	0 00	
	Personal accounts in Cannon & French's books, amounting to.	5,576 70	0 00	Worthless balance partly offset.

		Estimated value.		
	Personal property:			
	Unsettled interest in law firms of Cook, Dillon & Ludley, and Cook, Lindley & Clark	1,500		
		1,500		

395		Estimated value.		
	Personal property, cont'd:			
	Unsettled interest in the late firm of Cook, Sargent & Downey	1,500		
	Unsettled interest in the late firm of Cook, Sargent & Parker, Rock Island	1,000		
		200		
		2,700		
	Real estate:			
	Banking-house in Davenport subject to mortgages thereon.			No value over incumbrance.
	John P. Cook's property on 4th & Brady streets, in lots 9 & 10, block 57, subject to deed of trust	500 —		
	John P. Cook's farm, on the Dubuque road, in section 13, township 78, range 3 east, subject to mortgage thereon.			No value over incumbrance.
396	Real estate, continued: Forward	500		
	Lot No. 12, school section, township 77, range 2 east, 10 acres belonging to E. Cook & Geo. B. Sargent	50		
		550		
	E Cook's northeast quarter of sect. 32, town. 78, range 3 east, 160 acres, subject to deed of trust thereon.			No value over incumbrance.
	E. Cook's & Jno. P. Cook's homesteads, subject to deeds of trust thereon.			No value over incumbrance.
	Cannon & French, mill property. Title in Geo. L. Davenport, as collateral for endorsements—1,865 38-100 acres.			No value over incumbrances.
	1,865 38-100 acres of land, pledged as collateral to Robert Keith.			No value over incumbrance.
	160 acres of land in Nebraska, N.E. ¼ sec. 2, T. 15, R. 11 E., collateral for A. Kroger's note for $1,246 12	200 00		
		750		
	Lot. No. 1, section 24, township 80, range 5 east, 43 37-100 acres, Scott Co	200 00		
	Forward	950 00		

397	Real estate, continued: Forward	950 00	
	Lot No. 1, town of Walcott, with office	50 00	
	North half of lots 9 & 10, block 65, subject to mortgage made by J. M. D. Burrows	0 00	
	16 acres timbered lands, from the south end of east half of S. W. ¼ of S. E. ¼ sec. 23, T. 80, R. 6 west, in Johnson Co	100 00	
	Leasehold lot 3, block 69, Davenport	0 00	
	38, from west side lot 7, in Cook & Sargent's addition	100	
	60 x 150 ft. at northeast corner of 3d & Oak streets, and west of land formerly sold to Coates	100	
	40 acres of land, bo't of J. J. Burtis, S. E. ¼ of N. W. ¼ sec. 13, T. 96, R. 41, O'Brien County.		
	Unsettled interest in the following faint real estate accounts, viz:		
398	E. W. Clark, Dodge & Co	Of no value that can at present be estimated.	
	Benjamin F. Boyden		
	F. B. Hayes, with Cook & Sargent		
	Do with Cook, Sargent & Cook		
	Arthur G. Coffin		
	William Amory		
	C. Partridge, with Cook & Sargent		
	Do with Cook, Sargent & Cook		
	Jared Sparkes		
	Wm. Whiting		
	Edward Hayman		

			Estimated value.	
	Assets of Ebenezer Cook:			
	Undivided ¼d of 46 acres of land below Rockingham		120	
	Small tract, S. W. corner of S. E. ¼ of sec. 23, T. 78, R. 3 east, about 10 acres, legal title in E. Cook, equitable title in trustees of Ira Cook's estate.			
	75 shares Miss. & Mis. railroad	7,600	1,000 —	
	4 shares Davenport Gas-l't & Coke Co		0 00	
	190 shares Sheffield M'g & Transp. Co., pledged as collateral for C. & S.			
		7,600	1,120	

		Amount.	Estimated value.	
399	E. Cook's assets, continued:	7,600 00	1,120 00	
	Miss. & Miss. R. R. Co. interest scrip	83 52	20	
	One-half of an $1,800 judgement vs. H. S. Finley	900 —	200 —	
	Balance vs. Jenny Lind steamer	50	50	
		8,633 52	1,390 —	
	Notes all past due:			
	A. O. Dickey	20 —	0 00	
	James W. Cannon	10 —	0 00	
	R. S. Lawrence	50	0 00	
	John Harrington	20	0 00	
	J. H. D. Street	413 33	0 00	
	J. Harrington	40 —	0 00	
	J. E. Tugary	35 —	0 00	
	A. B. Lewis	105 —	25 —	
	John Ploen	100	0 00	
	F. Watson	10	10 —	
	P. U. Potter	52	52 00	
	H. Hass	60	60	
	J. Thorington & Jna. Parker	200	100	
	John S. Harrington	100	25	
	A. Wock	10	10	
	G. H. Fenno	10	10	
	Jeremiah Hubbard	10	10	
400	Joseph Terner	10	10	
	Philip Suiter	5	5	
	Dr. C. Pierucci	50	0 00	
	John W. Brown	25	0 00	
	P. Sherman	50	0 00	
	G. McKown	5	0 00	
	A. Kennedy	23	0 00	
	Cyrus Fish	17	10 —	
	James Hall	5 45	5 45	
		10,069 30	1,702 45	

	Amount.	Est'd value.	
Assets of Sargent & Dixwell:			
H. H. Lewis	14 00	0 00	
E. Cook Mayer	1,779 29	0 00	Offset.
Bank of North America, N. Y	30 11	30 11	
James Mackintosh	193 00	0 00	
	2,016 40	30 11	

		Estimated value.
Office furniture:		
Steel money-safe		200
Standing desk		5
3 sitting desks		9
7 chairs		5
Clock		5
Water-cooler		1
Large table		1 50
Small table		1
Copying-press		5
2 land signs		1 50
Money-table, 3		3
2 spitoons, 1; 2 stools, .20		1 20
2 cases drawers, maps, &c		10
		$248 20

401 RECAPITULATION.

	Amount.	Estimated value.
Bills receivable	46,092 71	3,048 20
Do "special"	4,226 45	1,035
Do from E. C. & G. B. S	124 11	50 39
Do collateral from Burrows & Prettyman	1,038 05	30
Do collateral from D. A. Burrows	1,444 04	0 00
Do from assets Chub Bro., Barrow & Co., and Wickersham & Williams	9,087 68	10
Do collateral from Cannon & French	2,942 70	15
Do collater. from James W. Cannon	30 —	0 00
Do collateral from F. H. Fitzpatrick	90 —	0 00
Do collateral from J. M. Witherwax	988 09	101 54
Judgements in favor of C. & S	46,016 59	1,595 —
Depositers' accounts	32,772 12	2,752 76
General leger accounts	28,274 84	1,604 45
Tax receipts	182 15	0 00
Personal ac's in Cannon & French's leger	5,576 76	0 00
Personal property	2,760	2,700
Real estate	1,400	1,400
E. Cook's assets	10,096 30	1,702 45
Furniture	248 20	248 20
Sargent & Dixwell's assetts	2,016 40	30 11
Total	$195,290 13	$16,323 03

402 STATE OF IOWA, *Scott County, ss:*

We, Geo. L. Davenport and J. Wilson Drury, assignees of Cook & Sargent and Sargent & Dixwell, and of the individual members of the said firms, being duly sworn, say that the above and foregoing is a true and full inventory and valuation of the estate of said assignees which come to their knowledge.

GEO. L. DAVENPORT.
J. WILSON DRURY.

Personally before the undersigned, a notary public in and for said county, Geo. L. Davenport and J. Wilson Drury, to me personally known, and severally made oath to and subscribed the foregoing affidavit.

[N. S.] JNO. L. COFFIN,
Notary Public, Scott Co.

403 (Indorsed:) Inventory of property of Cook & Sargent & Sargent & Dixwell.

Filed Feb. 12, 1861.

IRA M. GIFFORD, *Clerk D. C.*

404 *Claims filed against the estate of Cook & Sargent.*

Date filed. 1861.				Total.
Feb.	22.	George S. Carmichael:		
		Cook & Sargent's note.....	106 67	
		Endorsement	52 67	
				54
February	23.	Hans Selken:		
		6 certificates of deposit—		
		No. 11,830.....	60 00	
		11,878.....	50 00	
		12,030	75 00	
		12,887.....	100 00	
		12,895.....	350 00	
		12,986.....	125 00	
			760 00	
		Interest, at 6°/₀.....	69 96	
				829 96
"	"	Frederick Berner:		
		6 certificates of deposit—		
		No. 12,130.....	50 00	
		12,583.....	100 00	
		12,731.....	60 00	
		12,755.....	40 00	
		12,874.....	29 00	
		12,930.....	75 00	
			354 00	
		Interest, at 6°/₀.....	32 41	
				386 41
"	25.	Kramer & Rahm:		
		Cook & Sargent's d'ft on Sargent & Dixwell—		
		No. 32,405.....	366 02	
		Protest.....	1 53	
		Interest	26 84	
				394 39
		Amount carried forward.....		$1,664 76

405		Amount brought forward.....		1,664 76
	1861.			
March	2.	J. B. Allan:		
		Certificate of deposite No. 12,767.....		50 00
"	5.	E. W. Clarke:		
		Balance of ac. Jan. 18th, 1860.....		87 25
"	5.	Anderson Martin:		
		3 certificates of deposite—		
		No. 13,993.....	23 23	
		12,962.....	145 —	
		12,992.....	100	
			268 23	
			18 09	
				286 32
"	8.	F. S. McKean:		
		D'ft on Geo. Smith & Co.,		
		No. 32,446.....	11 00	
		Interest.....	80	
				11 80
"	8.	Sebastian Scheer:		
		Certificate of deposite No. 12,961.....		50 00
"	14.	Drapper Ruggles:		
		Cook & Sargent's note, dated Jan. 1, 1860, interest at 10% from date, & ex. on N. Y.....		1,230 00
"	15.	John Remer:		
		Balance of ac.....		44 32
"	18.	Wm. H. Tuthill:		
		Bal. of ac.....		1,266 —
		Forward		$4,690 45
406		Forward		$4,690 45
	1861.			
March	27.	F. S. Bailey, cash'r Agawam Bank:		
		Draft on Sargent & Dixwell,		
		No. 32,434.....	218 57	
		Protest, 1 56; interest, 17 12.	18 68	
				237 25
"	"	H. Johnson & Co.:		
		D'ft on Sargent & Dixwell,		
		No. 32,344.....	17 65	
		Protest, interest, & costs ...	2 81	
				20 46
"	30.	J. M. Ligett:		
		Deposit ac.....		320 27

April	9.	H. K. Sheldon: Contingent claim on bond of Minor & Bro's		1,680 00
"	"	Partridge, Pinchot & Warran: Contingent on bond of Minor & Bro...		861 20
"	10.	J. V. Rogers & T. O. Grannis, collaterals: Cook & Sargent's notes, 2–5 April, 1861.		429 59
"	10.	Muscatine Branch of State Bank of Iowa: Cook & Sargent's note, due 1–4 Jan'y, 1860, defence on the above note.....		1,000 00
"	10.	John R. Linberger: Draft on Clarke, Dodge & Co., No. 32,480.....	140 32	
		Exchange, 1 05; protest, 81c't	1 86	
				142 18
		Forward		9,381 40
407		Forward		$9,381 40
	1861.			
Apr.	11.	Robert Keith: Judgements	4,904 00	
		Costs	30 05	
				4,934 05
		Has collateral notes secured by deed of trust.		
"	12.	Samuel Herschel: Deposit ac.....		33 30
"	16.	Jane Higgins: Balance of certificate of deposit, 11,649.		41 00
"	17.	Machinists' Bank, Taunton, Mass.: Judgements, interest, & costs	9,391 98	
		Ditto.....do.....do..	2,586 67	
		Ditto.....do.....do..	2,132 39	
				14,111 04
"	20.	H. B. Doolittle: Draft on Clarke, Dodge & Co., No. 32,431.....	49 00	
		Interest & protest.....	4 90	
				53 90
"	23.	J. H. Rochester & Bro.: Draft on Clark, Dodge & Co., 32,472....		$504 75
		Contingent claim as endorsed.		
"	24.	Machinists' Bank, Taunton, Mass.: French & Davis—		
		Note dated 20 July, '59...	3,500	
		" " 6 Aug., " ...	3,500	
		" " 1 Sep., " ...	4,000	

		John L. Davis—		
		" " 6 Oct., " ...	1,142 91	
		Protest, int., &c.....	850 14	
				12,993 05
				$42,052 49
408		Forward		42,052 49
	1861.			
April	24.	E. Okerberg:		
		Draft on Cook, Sargent & Cook, No. 32,364.....		20 00
"	30.	Erastus Partridge:		
		D'ft on Cook & Sargent, 17 Dec., '59...		1,330 95
May	3.	Washington Bank, Boston:		
		Notes of Cook & Sargent, G. B. Sargent, G. B. Dixwell, dated 24 March, 1860, a 6 mo's	4,229 18	
		Ditto..ditto..at 1 year.	4,352 36	
Contingent as endorsers.		John L. Davie's note, dated 28 June, 1859, at 6 mo's, end'd Cook & Sargent & G. B. Sargent.....	1,694 00	
Ditto.		Marshall & Drury's note, dated 2d Feb., '60, endorsed Cook & Sargent & Sargent & Dixwell.....	1,000 00	
Ditto.		Marshall & Drury's note, dated Feb. 1, '60, 6 mo's, end'd Cook & Sargent & Sargent & Dixwell.....	3,200 00	
		Chauncy Krum's note, dated 16 Jan'y, '60, 6 mo's, end'd Cook & Sargent & Sargent & Dixwell.....	2,600 00	
				17,075 54
May	7.	George F. Coolege:		
		Draft on Clark, Dodge & Co.	94 71	
		" " Sargent & Dixwell.	25 76	
		Protest.....	2 31	
				122 78
"	7.	Joseph Kingerlee:		
		Balance deposit ac.....	1,401 58	
		Interest.....	134 75	
				1,536 33
		Forward		$62,138 09

409		Forward		62,138 09
	1861.			
May	8.	C. H. McCormick:		
		Bills of Bank of Florence		48 00
"	9.	Wissman & Lenden:		
		Draft on Sargent & Dixwell.	105 25	
		Costs	4 18	
				109 43
"	10.	James M. Beebe & Co.:		
		Draft on Sargent & Dixwell.	600	
		Costs	3 01	
				603 01
"	10.	Charles Leslie:		
		Depositors' ac.....		56 83
"	10.	John Commisky:		
		Balance certificate of deposit 12,823...		250 00
"	10.	Henrietta Brown:		
		Certificate of deposit—		
		No. 12,154.....	800	
		Ditto—		
		No. 12,950.....	200	
				1,000 00
"	10.	Merchants' Branch of State Bank of Iowa:		
		Balance of note.....		4,846 93
"	11.	William Dunton:		
		Certificate of deposit & int.....		3,489 82
		Forward		$72,542 10
410		Forward		72,542 10
	1861.			
May	13.	J. W. Guiteau:		
		ac. for services.....		32 42
"	"	Hoffman & Co.:		
		Draft on Sargent & Dixwell, 32,533.....	502 27	
		Protest.....	2 06	
				504 33
"	"	Lorenzo Shricker:		
		H. S. B. Tripp's check.....	30 70	
		Interest	1 80	
				32 70
				$73,111 55

Claims proved & filed against the estate of John P. Cook.

Date filed.			
1861.			
February	8.	Martin Briggs:	
		Bill for iron fence and interest.....	214 84

April	11.	Nathaniel Squires: Bill of carpenter work.....	315 00
May	11.	Louis Herbert: Balance due for work.....	600
"	13.	John F. Earnest: Balance of Jno. P. Cook's due-bill for St. Luke's Parish.....	400 00
			$1,529 84

411 *Claims proved and filed against the estate of George B. Sargent.*

1861.

May	10.	C. A. Davison: Note of Geo. B. Sargent's— Dated 14 May, '60—6 mo's.....	436 74
		..."..."..."...." 12 mo's.....	451 53
			$888 27

STATE OF IOWA, *Scott County, ss:*

We, George L. Davenport and J. Wilson Drury, being duly sworn, depose and say that the above is a true and full list of all persons claiming to be creditors of the firms of Cook & Sargent & Sargent & Dixwell, and of the individual members of said firms, as claimed by them; also a true statement of the amount of the claims of said creditors as presented to us, and as filed by them, with the date on which they were received.

GEO. L. DAVENPORT,
J. WILSON DRURY,
Assignees of Cook & Sargent & Sargent & Dixwell, and of the individual members of said firm.

Subscribed and sworn to before me this first day of June, A. D. 1861.
[N. S.] JNO. L. COFFIN, *Notary Public.*

(Endorsed:) Claims filed against Cook & Sargent, Sargent & Dixwell, and the individual members of said firms.

Filed June 3d, '61.

IR. M. GIFFORD, *Clk,*
By L. BISHOP, *Dep.*

412 *List of creditors to whom notice was sent.*

Filed June 3, 1861.

I. M. GIFFORD, *Clk,*
By L. BISHOP, *Dep.*

DAVENPORT, IOWA, *February 14th*, 1861.

To ——— ———

You will take notice that on the 23d day of January, 1861, the firms of Cook & Sargent & Sargent & Dixwell, and the individual members

of said firms, of Davenport, Scott County, Iowa, made a general assignment of their property to the undersigned assignees, for the benefit of their creditors.

You are hereby notified to present any claim you may have against them, or either of them, to the undersigned, duly verified by oath or affirmation, within three months from the date of this notice.

GEORGE L. DAVENPORT,
J. WILSON DRURY, *Assignees.*

List of creditors to whom the foregoing circular was mailed on the 15th day of February, 1861.

Name.	Address.	Name.	Address.
J. B. Allen	Davenport.	John Comminskey	Davenport.
P. Buener	Davenport.	F. Fearing	Davenport.
Mrs. Harriet Brainer	Davenport.	John Gleason	Davenport.
Paul Bernard	Davenport.	A. Gillespie	Davenport.
W. H. Cowl	Chicago, Ills.		
413 Michael Hayes	Davenport.	James Reilly	Davenport.
R. Kranse & others	Davenport.	Matthew Riley	Davenport.
Robert Keith	Keithsburg, Ills.	Hans Selken	Davenport.
W. Lowe	Davenport.	S. Schere	Davenport.
Harvey Leonard	Davenport.	B. Smith	Davenport.
Stephen Lindley	Davenport.	Lindley & McKay	Davenport.
James J. Lindley	Davenport.	John E. Taylor	Davenport.
James McCosh	Davenport.	E. C. Van Tuyl	Davenport.
F. McKay	Davenport.	Alex. Brownlee	Davenport.
A. Martin	Davenport.	T. C. Campbell	Davenport.
Jno. Powers	Davenport.	Cook, Dillon & Lindley	Davenport.
Henry Rusch	Davenport.	Cook & Drury	Davenport.
F. E. Rothstein	Davenport.	A. A. Crampton	Davenport.
F. Rock	Davenport.	Wm. A. Davidson	Davenport.
414 Wm. H. Dedrick	Davenport.	J. M. Ligget	Davenport.
L. C. Dessaint	Davenport.	Wm. MacKenzie	Davenport.
French & Davies	Davenport.	H. B. Matthews	Davenport.
A. C. Fulton	Davenport.	Geo. Murray	Davenport.
T. V. Greene	Davenport.	Miner, Haskell & Co.	Davenport.
H. Haups	Davenport.	Wm. McManus	Davenport.
P. P. Harding	Davenport.	Thomas Orr	Davenport.
John E. Henry	Davenport.	Henry O'Conner	Muscatine, Iowa.
Samuel Hirschel	Davenport.	Parker & Edwards	Davenport.
J. R. Jackson	Davenport.	Oliver Parsons	Davenport.
A. P. & D. Kelly	Davenport.	Renwick, (Rebecca,)	Davenport.
Lowey & Bradley	Davenport.	J. Ruck	Davenport.
Joseph Kingerlee	Harrisburg, Pa.	J. H. Ross	Davenport.
Charles Leslie	Davenport.	T. D. Shaman, cash'r	Chicago, Ills.
L. Lowenstein	Davenport.		
415 H. S. B. Trip	Davenport.	N. Ferguson	Care of N. Ripley, Grinnell, Iowa.
Chauncey Krum	Davenport.		
J. Gamble	Davenport.	Geo. Deacon	Chicago, Ills.
J. W. Smith	Davenport.	Rev. T. B. Flower	Holmes' Hole, Mass.
F. Wisler	Davenport.	Green & Stone	Muscatine, Iowa.
H. R. Child	Davenport.	Francis B. Hayes	Boston, Mass.
J. R. Rollman	Davenport.	B. T. Boyden	East Foxboro, Mass.
Kelly	Davenport.	E. W. Clark, Dodge & Co.	New York.
M. H. Hall	Davenport.	Robert Nichols	Brooklyn, N. Y.
A. Timmens	Davenport.	James O. Sargent	Roxbury, Mass.
Newbury, Mr.	Davenport.	Robert Palmer	Care Wm. Doolan, Davenport.
Mr. Wilson	Davenport.		
E. W. Clark & Co.	Philadelphia, Pa.	Spenser, Vela & Co.	Boston, Mass.
John J. Dixwell	Boston, Mass.	Wm. H. Tuthill	Tipton, Iowa.
Gen'l John A. Dix	Washington, D. C.	Epes Sargent	Boston.
Charles W. Durant	New York.		
416 John O. Sargent	New York.	Mandeville, A.	Carrolton, Pa.
Cole M. Gates	Davenport.	Samuel Perin	Care of S. Langdon, Cincinnatti, Ohio.
Coe	Davenport.	Jeremiah Leffel	Donaldsonville, Clark Co., Ohio.
M. Gates	Davenport.		
H. Peters	Davenport.	Mrs. Anna Parker	Boston, Mass.
S. H. White	Moline, Ill.	George Choppering	Philadelphia, Pa.
Mary E. Peare	Davenport.	James Jackson	Boston, Mass.
Thomas Boyer	Hamburg, Germany.	Antoine Le Claire	Davenport, Iowa.
J. W. Clark & Co.	Boston, Mass.	Lee, Heiggeman & Co.	Boston.
J. C. Westphal	Davenport.	Bank of St. Louis	St. Louis, Mo.
Jeremiah Plympton	Boston, Mass.	Machinists' Bank	Taunton, Mass.
John Remer	Davenport.		

John J. Anderson & Co..	St. Louis, Mo.	J. W. Stewart.....	Davenport.
George Smith & Co.....	Chicago, Ills.	State Bank of Iowa	B. B. Woodward, cash'r, Davenport.
Freeman's Bank.....	Boston, Mass.	Erastus Partridge.....	Seneca Falls, N. Y.
Washington Bank..... ..	Boston, Mass.		
417 Drapper Ruggles...	Worcester, Mass.	James M. Beebe & Co	Boston, Mass.
B. F. Carmichael's heirs.....	John E. Henry, adm'r, Davenport.	S. Pulsifer & Co.....	Peoria, Ills.
Thomas H. Clelland	Care of Dr. Thistle, Davenport.	Briggs & Brother.....	Rochester, N. Y.
		Hoffman & Co.....	New York.
Winterbottom & Jones...	Fort Madison, Iowa.	Lewis Hansen.....	Davenport.
H. Johnson & Co..	St. Louis, Mo.	G. H. Bennett	Cleaveland, Ohio.
Read, Drexel & Co.....	Philadelphia, Pa.	Wm. C. Joy.....	Penn Yan, N. Y.
Wiseman & Senden.....	St. Louis, Mo.	J. R. Rochester & Bro.....	Rochester, N. Y.
Krammer & Rham	Pittsburgh, Pa.	J. R. Lionberger.....	St. Louis, Mo.
Gregory, Tilton & Co.....	Boston, Mass.	R. S. Stow.....	Chicago, Ills.
F. S. Bailey, cash'r..... ..	Springfield.	J. B. Packard.....	Chicago, Ills.
Edward Hayman..... ..	South Berwick, Maine.	Lane, Sanford & Co.....	Rockford, Ills.
Geo. F. Coolege.....	New York.	Thomas J. Dudley, jr.....	Chicago, Ills.
J. D. Scully, cashier.....	Pittsburgh, Pa.	T. S. McKean.....	Anamosa, Ills.
William H. Williams & Co.	Pittsburgh, Pa.	John Morse.....	Chicago, Ills.

418 STATE OF IOWA, *Scott County, ss:*

I, J. Wilson Drury, one of the assignees of Cook & Sargent, Sargent & Dixwell, and of the individual members of said firms, do depose and say that the foregoing is a true and correct list of the creditors of Cook & Sargent, Sargent & Dixwell, and of the individual members of said firms, with their places of residence, as reported to us; and that on the 15th day of February, 1861, I deposited in the post office, in the city of Davenport, a circular letter, of which the foregoing is a copy, addressed to such of said creditors as specified in the foregoing list, at their respective places of residence, as specified in said list; and that on all letters addressed to persons out of the city of Davenport the postage was paid.

J. WILSON DRURY.

Subscribed & [and] sworn to before me this first day of June, A. D. 1861.

[N. S.] JNO. L. COFFIN, *Notary Public.*

419 *Assignees' notice.*

Notice is hereby given that on the 23d day of January, A. D. 1861, the firms of Cook & Sargent & Sargent & Dixwell, and the individual members of said firms, of Davenport, Scott County, Iowa, made a general assignment of their property to the undersigned assignees, for the benifit of their creditors. All persons holding claims against said firms, or against the individual members of said firms, are hereby notified to present the same, duly verified under oath or affirmation, to said assignees in the city of Davenport, State of Iowa, within three months from the date of this notice.

Davenport, February 14, 1861.

GEO. L. DAVENPORT,
J. WILSON DRURY,
Assignees.

feb14d6w]

Certificate of publication.

STATE OF IOWA, *Scott County, ss:*

Add. H. Sanders being duly sworn, says that he is one of the proprietors of the Davenport Gazette, a newspaper published in said county, and that a notice, a printed copy of which is hereunto annexed, has been published in said paper six weeks, commencing on the 14th day of February, 1861, last, and ending on the 28th day of March, 1861.

ADD. H. SANDERS.

Subscribed and sworn to before me this 30th day of May, A. D. 1861.

[N. S.] JNO. L. COFFIN,
Notary Public, Scott County, Iowa.

(Endorsed:) Publisher's certificate. Filed June 3d, '61.
I. M. GIFFORD, *Clk*,
By L. BISHOP, *Dep.*

420 STATE OF IOWA, *Scott County, ss:*

In distr. court, June term, 1861.

To the honorable the judge of the district court of Scott County:

The undersigned, assignees of Cook & Sargent & Sargent & Dixwell, and of the individual members of said firms, respectfully report that the within statement contains a true & correct statement of the moneys collected on the assets that came into our hands as such assignees, and also a true and correct statement of the expenses incurred in the settlement of their matters, except clerk's hire and assignees' fees up to this date.

They also report that from the best information they can obtain, and from their own experience in collecting, they believe that most of the claims are uncollectable, & many of them quite worthless. They also report that most of the real estate that passed to them by the assignment is largely encumbered, and in most instances to a greater than its present value. They, therefore, respectfully submit whether it would not be advisable and most for the interests of the creditors, that the said assignees be ordered to sell such of the estate and assets in their hands, as to them may seem advisable, at public auction.

Dated June 11th, 1861.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

(Endorsed:) Report of Davenport & Drury, assignees of Cook & Sargent et al.

Filed June 11, '61.

I. M. GIFFORD, *Clk*,
By L. BISHOP, *Dep.*

421 DR. *Cash account of the assignees of Cook and Sargent.*

1861.			
February 21.	To collection of R. Gitting's note of Dec. 26, '56	89 48	
	" " " ditto "		
	Feb. 16, '58	28 91	
	" interest on ditto	46 81	
		165 20	
	Discount 50% as per agreement with Burrows & Prettyman	82 60	
			82 60
	(Above from assets of Cook & Sargent.)		
March 14.	" E. Cook's assets—G. W. Fenno's note paid		10 00
" 20.	" Sargent & Dixwell's assets—check on B'k of No. America, N. Y., $31 36, and prem, 1 57.		

"	"	" Cook & Sargent's assets—T. O'Brien's note		9 39	
		" interest on.....ditto...		2 11	
April	19.	" do shool-house fund orders.....			
		175.....$20.....			
		176..... 10.....			
		177..... 10.....			
		178..... 10 at par.....			50
"	"	Do..do. do 179..... " ".....			10
					197 03
				118 93	
					118 93
June	11.	To balance, cash on hand		$106 43	

422 *Sargent & Dixwell, & of the individual members of said firms.* CR.

1861.			
Jan.	26.	To paid J. M. Liggett for coal	4 15
Feb.	1.	" postage stamps.....	2 10
"	11.	"....do.....do.....	3 20
"	13.	" J. M. Liggett for coal	2 50
"	14.	" Miner, Haskell & Co's assignees, envelopes, & paper.....	4 55
"	"	" U. S. Express Co., for patents.....	75
"	15.	" postage stamps.....	3 30
"	22.	" mending chair.....	50
"	28.	" James Whity, care of office.....	2 25
March	9.	" J. McCosh, recorder, recording assignment....	20 75
"	12.	" postage stamps.....	3 20
"	13.	" case for books.....	1 25
"	21.	" postage stamps	3 15
"	23.	" James Whity, services.....	2 00
"	30.	" J. M. Ligget, for coal & putting in.....	2 75
April	3.	" postage stamps	3 15
"	12.	" J. C. Wallace, repairing clock	1 25
May	1.	" James Whity, services.....	2 00
"	"	" postage stamps.....	3 25
"	14.	" James Whity, services to 24 May.....	2 00
"	27.	" postage stamps.....	1 00
June	7.	" Geo. W. Ells & Co., books & stationery.....	9 05
"	"	" balance carried down.....	118 93
			197 03

DAVENPORT, IOWA, *June 7th*, 1861.

1861.			
June	11.	To Sanders & Bro's, bill advertising & printing ...	12 50
		" balance.....	106 43
			$118 93

DAVENPORT, *June 11th*, 1861.

423 *Additional list of Cook & Sargent's assets.*

	Amount.	Estimated value.
Fontonelle Bank notes, Bellevue, N. Y.....	500 00	20 00
Uncurrent & broken bank-notes.....	33 00	0 00
	$533	$20 00

Additional list of Jno. P. Cook's assets.

Balance due from J. W. Drury.....	478 00	478 00
42 shares Miss. & Missouri R. R. stock.....	4,200 00	442 00
One black horse, 17 y'rs old, known as "Dick."	.....	30 00
J. C. Hallock's note.....	25 00	0 00
	$4,703 00	550 00

STATE OF IOWA, *Scott County, ss:*

We, Geo. L. Davenport & J. Wilson Drury, being duly sworn, do depose and say that the above estimated valuation of assets is true, according to our best knowledge & belief.

GEO. L. DAVENPORT,
J. W. DRURY,
Assignees of Cook & Sargent, Sargent & Dixwell, & the individual members of said firms.

Subscribed and sworn to before me this first day of June, A. D. 1861.
[L. S.] JNO. L. COFFIN, *Notary Public.*

(Endorsed:) Additional lists of Cook & Sargent's & John P. Cook's assets.

Filed June 3, '61.

I. M. GIFFORD *Clk*,
By L. BISHOP, *Dep.*

424 STATE OF IOWA, *Scott County, ss:*

In the matter of the assignment of Cook & Sargent et al.—June term, 1861.

This day appeared Geo. L. Davenport and J. Wilson Drury, assignees of Cook & Sargent and Sargent & Dixwell, and of the individual members of said firm, and file their report; and thereupon it is ordered that said assignees be authorized and directed to offer for sale at public auction, at the door of the court-house, in the city of Davenport, in said county of Scott, and State of Iowa, the assets and personal and real estate of said firms that came into their possession as such assignees, they first giving thirty days' notice of such sale in the Davenport "Gazette," and "Democrat & News," with a general description of the same.

They are, however, authorized to withold from such sale such of the assets as in their discretion they consider should not be sold at this time, and they are hereby further authorized to make sale of such prop-

erty and assets from time to time as by them may be considered advisable, giving at each sale the public notice hereinabove specified. It is further ordered that the said assignees, as soon as practicable after the publication of said notice, send to each of the non-resident creditors who have filed and proved claims against said firms and individuals, a copy of said printed notice of the time of sale, so far as they know their respective places of residence. It is further ordered that John L. Coflin be allowed the sum of three hundred dollars, on account, as clerk for said assignees.

JOHN T. DILLON, *Judge.*

(Endorsed:) In the matter of the assignment of Cook & Sargent et al. Entry 323.

Filed June 22, 1861.

IRA M. GIFFORD, *Clerk.*

425 To the Hon. John T. Dillon, judge of seventh judicial district, in and for the State of Iowa:

August term, 1861.

The undersigned, assignees of Cook & Sargent, Sargent & Dixwell, and the individual members of said firms, would respectfully report that, in pursuance of an order made at the last term of this court, they made a sale at public auction of a large portion of the assets which came to their hands as such assignees.

That public notice of such sale was given as by said order, proofs of which notice is herewith filed. That the proceeds of said sale amounted to the sum of one thousand four hundred and seventy-nine dollars & seven cts., but of which the expense of the sale and publication is to be deducted, under the direction of this court. They further report that the claims filed against said firms, and to which no exceptions have been filed, amount to the sum of seventy-three thousand one hundred & eleven $\frac{50}{100}$ dollars, as heretofore reported; that there are some assets formerly belonging to said assignors not yet settled, and some in litigation not yet closed. We respectfully submit the above report, and submit the question as to ordering dividend, to the direction of the court.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

(Endorsed:) Report of assignees of Cook & Sargent et al.

Filed Aug. 30, '61.—GIFFORD, *Clk.*

426 *Sale at auction, Nov.* 1, 1862, *of the remaining assets of Cook & Sargent, Sargent & Dixwell, & the individual members of said firm.*

		Sold for.
John Johnson's past due note	192 70	10
J. R. Alden ..... " ..... do	30 00	10
F. O. Gates ..... " ..... bal	4 00	02
W. Morton ..... "	295 00	05
Henry Vieths	198 09	03
Samuel Branbaugh, interest	0 00	03
Lyman	10 00	05

Fenno & Porter	8	00	05
John Lowry	65	00	05
John & Joseph Stones	9	05	05
Work & Wallace	10	00	0 05
T. V. Blakemore	21	66	0 05
Arthur Washburn	58	67	2 00
W. A. Dourby & McKibben, bal		34	01
Donahue & G. E. Hubbell	10	00	0 03
F. Moller	500	—	03
W. Todd	3	65	05
G. G. Arnt	133	34	05
Do	133	33	05
Jno. R. Jackson	200		05
H. Sevin, St. Louis, bal	1,523		03
R. H. Rogers	2,250		03
Larns, Longfeld & Co	312	05	05
James Clark	110		05
Do	100		05
Do	100		05
J. B. Rambo & W. McAffer	178	55	03
J. V. H. Judd, W. Mashall, jr	590		05
Wickersham & Williams	892	72	1 25
Van Dusen, Armstrong, & others	62	40	05
J. A. Biddeson & Co	468	32	10
Isaac Parks	20		05
Enos Tichenor	20		1 00
D. H. Wheeler	25		10
F. Skiles	5		03
Alex. Williamson	10		05
Amount carried forward			

(Indorsed in red ink:) These notes were mostly pledged for collateral and some of them could not be found; in such case Cook & Sargent's interest in the notes only was said.

427	Forward			5 89
	W. P. Parkhurst	25		03
James W. English		41		05
Geo. F. Macey		30		02
T. & A. Dedrick		10		05
Henry Altman		174	73	10
James Mackintosh		155	25	05
"do		80		05
Renwick & Son	3,734	29		1 25
Graham & Kepner	1,000			10
Wm. Keith, bal		58		02
J. W. Guiteau		25		02
G. W. Carr		112	26	03
J. W. Guiteau		10		02
Graham & Kepner	1,000			1 60
L. B. Collamer, cond'l		294	55	05
Ira M. Gifford		200		05
Thos. S. Arrison		200		05
Do		368	45	05
Wm. L. Cook	1,500			05

Jno. P. Cook		350		13
Z. S. Webb & Co., judgement		800	28	00
Geo. L. Davenport		990	72	10
Jos. Glaspy, 6 notes		6,075		10
Jas. M. F. Hall		200	7	00
J. Weaver, jr., pres'd't		1,496		25
Judt vs. Cath. McIntyre		137		10
E. S. Smith	Subject to Lowenstein claim	47	50	25
Do. do.		47	50	25
Do. do.		47	50	25
Do. do.		.....		....
10 acres of land near Rockingham, belonging to Ira Cook's estate, legal title in E. Cook			1	00
Balance of an account against the Iowa City lumber yard				25
Carried forward			47	46

428	Forward		47	46
Marshall's tax-sale certificate 1857, of lot 15, B. 2, Green's add		530		10
Marshall's tax-sale cert. 1857, of east ½ lot 6, B. 1, C. & S., 2d add		170		05
North ½ lots 9 & 10, bl'k 65, Davenport, subject mortgage				25
Small corner of land on the east side of S. E. ¼ 33, 78, 3 E., ½ acre, legal title in E. Cook, belongs to Ira Cook estate			1	00
Interest of Cook & Sargent in town of Durant, being ¼ of the unsold lots, 80 acres land in Cedar Co., & sundry notes subject to a lien of about		4,000	1	00
Interest of Geo. B. Sargent in 100 shares Sheffield m'g stock, pledged as collateral				25
Interest of G. B. Sargent in 1 share of Lake Superior Land Co., pledged				25
Cook & Sargent's, in the bank building			17	
Interest of Cook & Sargent in a demand against Rowe & Hyde, for lumber, &c., transf'r'd to L. Lowenstein				25
An old rent-bill vs. H. B. Briggs				25
Office furniture :				
1 standing desk			5	00
1 sitting do			3	00
			75	86
1 " do. (without top)			3	00
Carried forward			78	86

429	Forward	78 86
	1 sitting desk, (without top)	7 50
7	chairs	7 00
1	clock	8 00
1	water-cooler & stand	1 50
1	large table	3 50
1	small	1 50
1	copying-press	5 00
2	land signs	1 00
1	money-table	15 50
2	stools	1 00
2	spitoons	20
1	map of Davenport	1 00
1	burglar-proof safe	21 00
Jno. P. Cook's interest in black horse "Dick"		1 00
	Total amount sold at auction	153 56
Collected from J. W. Drury for amount of his indebtedness to John P. Cook		478 00
	Total collections since last report	631 56

Davenport, Iowa, Nov. 20th, 1862.
E. E.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

(Indorsed:) Ac. sales of remain'g assets Nov. 1, 1862, by Geo. L. Davenport & J. Wilson Drury, assigees of Cook & Sargent et al.

Filed Nov. 22, 1862.

I. M. GIFFORD, *Clk*,
Per H. JENSEN, *Deputy.*

430 (Printed.)

Assignees' sale.

In pursuance of an order of the district court of the county of Scott and State of Iowa, the undersigned, assignees of Cook & Sargent and Sargent & Dixwell, and of the individual members of said firms, will offer for sale at public auction the remaining assets of said firms and individuals, consisting of accounts, judgements, and real and personal property. A list of the same can be seen at the office of the assignees from day to day until the day of sale. The sale will take place at office of the assignees, in the basement of the State Bank building in the city of Davenport, county of Scott, & State of Iowa, on Thursday, the 30th day of October, 1862,

AT CHAMBERS, *Nov.* 1, 1862.

It appearing that the annexed notice has been duly published in the Democrat & News of this (Scott) county, and that copies of it have been mailed to each of the creditors, as contemplated by the former order, it is now ordered that the assignees do proceed to make sale pursuant to the annexed notice & report at the next term of the district court.

JNO. F. DILLON, *Judge.*

commencing at 10 o'clock a. m.
Terms of sale, cash.
Davenport, September 19, 1862.
GEO. L. DAVENPORT,
(Signed) J. WILSON DRURY,
Assignees.
sep20td]

The above sale is pos'poned until Saturday next, at 10 o'clock.
GEO. L. DAVENPORT,
(Signed) J. WILSON DRURY,
Assignees.

Endorsed:) Judge Dillon's order for assignees' sale. Nov. 1st, 1862. Entry. (Rec. 7, 514.)

431 In the matter of the assignment of Cook & Sargent, Sargent & Dixwell, and the individual members of said firms.—November term, 1862.

To the honorable district court of the county of Scott, State of Iowa:

The undersigned, assignees of Cook & Sargent, Sargent & Dixwell, and the individual members of said firm, would respectfully report:

That on the 1st day of November, 1862, they had a sale of the remaining assets of said firms, and of the individuals; that said sale was made after giving thirty days' notice in the Democrat & News, a paper printed & published in the city of Davenport, county of Scott, State of Iowa, in pursuance of an order made at the June term of this court, A. D. 1861, and also by authority and in pursuance of another order made by the honorable the district judge of said county, on the 1st day of November, A. D. 1862, a copy of which last order is hereto attached. A detached report of said sale is herewith filed.

We also report that notices were sent by mail to the different creditors of said firms and individuals, a copy of which said notice is the printed slip attached to the order of said judge, made Nov. 1st, 1862, so far as we knew or could learn their respective places of residence.

We report that the gross amount of said sale on the 1st day of November, 1862, was one hundred and fifty-three dollars and fifty-six cents.

We also report that there has been paid to the assignees since the first report the sum of four hundred & seventy-eight dollars
432 as individual indebtedness to John P. Cook, making the whole amount received since our last report the sum of six hundred and thirty-one dollars & fifty-six cents.

We report that as expense in settling the said estate, since our last report, we have paid out the sum of two hundred & seventy-three dollars and twenty-five cents; a copy of the items [a copy of the items] is contained in our final account, herewith filed.

We further report that the sum of one thousand forty-seven dollars and thirty-eight cents is the balance remaining in our hands, after deducting the amount paid out for expense, the particulars of which, and the source from which the funds were received is particularly specified in the accompanying account.

We further report that, as yet, no allowance has been made to the assignees for their services in the matter of the assignment. We herewith present an account for assignees' services, which, if the court may consider reasonable and proper, we respectfully ask that it may be allowed.

We farther report that all the assets are sold so far as the same came to our hands, or so far as we have any knowledge, and we respectfully ask for an order for this distribution of the surplus funds in our hands.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

433 *Copy.*

(Printed.)

Assignees' sale.

In pursuance of an order of the district court of the county of Scott & State of Iowa, the undersigned, assignees of Cook & Sargent & Sargent & Dixwell, & of the individual members of said firms, will offer for sale at public auction the remaining assets of said firms & individuals, consisting of accounts, judgements, and real & personal property. A list of the same can be seen at the office of the assignees from day to day until the day of sale. The sale will take place at the office of the assignees in the basement of the State Bank building in the city of Davenport, county of Scott, & State of Iowa, on Thursday, the 30th day of October, 1862, commencing at 10 o'clock a. m. Terms of sale, cash.

Davenport, Iowa, September 19, 1862.

GEO. L. DAVENPORT,
J. WILSON DRURY,
Assignees.

sep20td]

The above sale is posponed until Saturday, November 1st, next, at 10 o'clock.

GEO. L. DAVENPORT,
J. WILSON DRURY,
Assignees.

AT CHAMBERS, *Nov.* 1, 1862.

It appearing that the annexed notice has been published in the daily Democrat & News of this (Scott) county, and that copies of it have been mailed to each of the creditors, as contemplated by the former order, it is now ordered that the assignees do proceed to make sale pursuant to the annexed notice, and report at the next term of the district court.

(Signed) JNO. F. DILLON,
Judge.

434 DR. The estate of Cook & Sargent, Sargent & Dixwell, & the individual members of said firms, in account with Geo. L. Davenport & J. Wilson Drury, assignees.

1862.	ACCOUNT No. 2.	
Sep. 29.	To stamps, envelopes, &c., mailing notices.....	2 50
Nov. 8.	" Richardson, West & Co., advertising..... sale & postponement.....	18 50

" 20.	" John L. Coffin, 15 mo's service & prop'n of rent		100 00
" "	" Cook & Drury, bill for legal services		152 25
" "	" Balance ac. carried forward		1,047 38
			$1,320 63

1861.	CONTRA CR.		
Oct. 12.	By balance cash on hand, as per first ac. rendered	$689 07	
1862.			
Nov. 20.	" sales of balance of assets Nov. 1, '62	153 56	
" "	" J. W. Drury, balance due J. P. Cook	478 00	
			1,320 63
Nov. 20.	By balance bro't down, in hands of assignees		$1,047 38

Davenport, Nov. 20th, 1862.
E. E.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

435 *Recapitulation of the accounts of Geo. L. Davenport & J. Wilson Drury, assignees.*

CASH ACCOUNT.

Total receipts	$2,284 46
Total expense	1,287 08
Balance, cash on hand	1,047 38

Receipts from assets of Cook & Sargent	1,704 10
Do ..... do ..... Sargent & Dixwell	2 25
Do ..... do ..... Ebenezer Cook	77 41
Do ..... do ..... John P. Cook	500 00
Do ..... do ..... Geo. B. Sargent	50
Do ..... do ..... Jno. C. Davie	00
Total assets collected	2,284 46
Total expenses	1,237 08
Balance	$1,047 38

CLAIMS PROVED AND FILED.

Against Cook & Sargent	73,511 55
Against Jno. P. Cook	1,529 84
Against George B. Sargent	888 27

Nov. 20th, 1862.

GEO. L. DAVENPORT,
J. W. DRURY, *Assignees.*

(Endorsed:) From ac. of Geo. L. Davenport & J. W. Drury, assinees of Cook & Sargent et al., & report of assignees.

Filed Nov. 22, '62.

I. M. GIFFORD, *Clerk*,
Pr. H. JENSEN, *Dep'y*.

Recorded in rec. 9, page 517.

436 Scott County district court.

In the matter of the assignment of Cook & Sargent, Sargent & Dixwell, and of the individual numbers of said firms.—August term, A. D. 1862.

It being represented by the assignees of the above-named parties that they have been delayed in the closing of the business of said assignment by the service of process of garnishment on them, and it being represented that a small portion of such assigment remains unsettled, it is ordered that the said assignees proceed to close up the business of their said assignment by the disposition of the property remaining in their hands, and that they hold the proceeds of such sale subject to the further order of this court.

(Signed) JOHN F. DILLON, *Judge*.

(Endorsed:) In the matter of the assignment of Cook & Sargent. Order of district court. 399.

437 Scott County district court, November term, A. D. 1862.

In the matter of the assignment of Cook & Sargent, Sargent & Dixwell, & the individual members of said firms.

NOV. 22D, 1862.

This day appeared J. Wilson Drury & Geo. L. Davenport, assignees of the above parties, and filed their report, and also an account-current of their actings and doings as said assignees; and the court having examined the same, and being sufficiently advised in the premises, it is ordered that the said report, and the account filed with the same, be approved and affirmed.

And it appearing that said assignees have been garnished, and which proceeding against them is still pending and undetermined, it is ordered that the amount remaining, after the allowance & payment of the assignees' account for their services, be and remain in their hands subject to the further order of this court.

It is further ordered that said assignees be and are hereby allowed the sum of seven hundred dollars ($700) in full for their services as such assignees up to this date; provided, however, that any person interested shall have until the first day of the next term of this court to file exceptions to said allowance; and if exceptions are not filed by or on the first day of said next term, then the above order of allowance is to stand absolute.

JNO. F. DILLON, *Judge*.

(Endorsed:) In the matter of the assignment of Cook & Sargent et al. Entry. Rec. 9, 515.

$117 68. DAVENPORT, IOWA, *Nov. 27th*, 1863.

Received from G. L. Davenport and J. Wilson Drury, assignees of

Cook & Sargeant, and of the individual members of said firm, the sum of one hundred & seventeen dollars and sixty-eight cents, being the first and final dividend declared by said assignees under the order of the district court, being on a claim against John P. Cook individually, and paid out of his individual assets; said claim having been filed and proved.

(Signed) JNO. F. ERNST,
Per COOK & DRURY, *his Att'y.*

438 District court, November term, 1863.

In the matter of the assignment of Cook & Sargent, and of the individual members of said firm.

Whereas heretofore, at the November term, A. D. 1862, J. Wilson Drury & George L. Davenport, assignees, filed their report and account current, which were approved by the court.

And whereas by said account it appeared that said assignees had in their hands, as cash receipts [as cash receipts] from assets which came into their hands, the sum of one thousand & forty-seven dollars and thirty-eight cents; and that of said amount the sum of five hundred dollars and twenty cents was received from the individual assets of John P. Cook, one of the members of said firm of Cook & Sargent.

And whereas, at the November term, 1862, an allowance of seven hundred dollars was made the said assignees for and on account of their services in the matter of said assignment; fifty dollars of which sum, by the order of this court made at this present term, were to taken from the individual assets of said John P. Cook, and the balance to be taken from the general fund of the assignment, if so much there should be.

And it appearing by the reports and accounts, heretofore filed, that individual claims to the amount of one thousand five hundred and twenty-nine dollars and eighty-four cents have been filed against the said John P. Cook.

And it further appearing that said assignees have been discharged from the garnishee process heretofore served on them, it is ordered that the said assignees pay over to the individual creditors of said John P. Cook, who have filed and proved their claims, the sum of four
439 hundred & fifty dollars and twenty cents, the same to be distributed pro rata among the creditors of said John P. Cook, according to their respective amounts.

And it appearing that when said sum shall have been duly paid, all matters and things pertaining to said assignment have been fully closed:

It is ordered, adjudged, and decreed that upon the filing of the evidences of payment of said sum with the clerk of the court, said assignees be fully released and discharged from all matters and things pertaining to said assignment, and that as such assignees they be fully discharged.

(Signed) JNO. F. DILLON, *Judge.*

440 (Indorsed:) District court, Scott County. In the matter of the assignment of Cook & Sargent. 10422. Entry.

Filed Nov. 23d, 1863.

IRA M. GIFFORD, *Clk,*
By M. D. SNYDER, *Dep.*

Cook & Drury.

441 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full and complete exemplication of all the papers and record entries on file in my office in the matter of the assignment of Cook & Sargent et al., the same having been carefully compared with the original papers.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at office in the city of Davenport, in said county, this 8th day of December, A. D. 1864.

[SEAL.] IRA M. GIFFORD,
Clerk of said Court.

[5-ct. rev. stamp can'd.]

Fees, $7 80, paid by James May.

442 (Indorsed:) No. 25, eq. May vs. Le Claire, ex'rs, & als. Inventory of property of Cook & Sargent & als.

Filed May 15, '65.

WOODWARD, *Clerk.*

443 4.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—

1st. Def'ts' exhibit No. 22: Jno. P. Cook in ac. with Cook & Sargent.

2d. Def'ts' exhibit No. 21: E. Cook in ac. with Cook & Sargent.

3d. Def'ts' exhibits Nos. 1 to 17, inclusive: Divers promissory notes.

4th. Def'ts' exhibits Nos. 19 & 20: Accounts of G. L. Davenport & [&] L. C. Dessaint from Cook & Sargent's depositor's-ledger "E."

5th. Def'ts' Exhibit "V:" Contract and sale, Cook & Sargent to Geo. L. Davenport.

6th. Def'ts' Exhibit "H" to "P," inclusive: Divers bills of exchange, &c.

7th. Def'ts' Exhibit "G:" J. May's promissory note to H. & A. T. Strippel.

8th. Def'ts' Exhibit "F:" Article of agreement, Antoine & J. A. Le Claire.

9th. Def'ts' Exhibit "D:" Article of agreement Antoine Le Claire & L. C. Dessaint.

10th. Def'ts' Exhibit "C:" Antoine Le Claire and wife, deed to L. C. Dessaint.

11th. Def'ts' Exhibit "B:" Charles Powers trustees' deed to L. C. Dessaint.

12th. Def'ts' Exhibit "A:" Check of L. C. Dessaint on Merchants' Branch of State Bank of Iowa.

13th. Def'ts' Exhibit "U:" Cook & Sargent in account with L. C. Dessaint.

444 14. Def'ts' Exhibit: Sheriff's deed to Drausin Wulsin.

W. G. WOODWARD, *Clerk.*

445 No. 1.

"EXHIBIT 22."

John P. Cook in ac. with Cook & Sargent.

1858.					
April	1.	To bal. from ledger "A"		2,065	68
"	"	" Cook & Co		22	55
"	"	" Hills & Washburn		22	15
"	"	" Danl. Reardon		258	25
"	"	" Leonard & Hibbard		300	
"	"	" self, 13; T. H. McGee, 187 49		200	49
"	3.	" sundries		200	
"	5.	" Chubb Bro., Barrow & Co., 1,700; David, 20.		1,720	
"	7.	" gas, 10; (9th,) Wiley, 18 29; self, 20		48	29
"	10.	" expenses, 4; Pat. McManus, 50		54	
"	"	" check, Nat. Squires		250	
"	14.	" " sundries, 30; (19,) L. Hilbard, 25		55	
"	21.	" self, 20; (22d,) note to ladies' treas., 83 25		103	25
"	23.	" self, 20; (24,) self, 10		30	
"	24.	" Nat. Squires		225	
"	27.	" T. Allen, 250; (30,) self, 50		300	
May	1.	" self, 50; Burea, 25; D. Hughes, 118		193	
"	5.	" W. Keith, 179 50; (6th,) self, 100		279	50
"	10.	" self, 250; C., D. & L., 2,000		2,250	
"	11.	" self, 20		20	
"	13.	" sundries, 16 32; Rambo, 50		66	32
"	18.	" self, 30; Sweeny R. Trant & Co., 2,020		2,050	
"	20.	" extravagance, 30; W. Van Tuyl, 55		85	
"	22.	" ex. on Philad'a and prem		306	
"	"	" Nat. Squires, 180; Rambo & Camp, 50		230	
"	26.	" Pat. McManus, 20; self, 20		40	
"	27.	" 30; (31,) L. & Hibbard, 150		180	
June	1.	" Dr. Reid, 360; sundries, 102 15		462	15
"	5.	" Rambo & C., 75; Squires, 200		275	
"	"	" rend. Sweeny R. Trant & Co., & ex		3,060	
"	10.	" sundries, 448 50; D. L. Rowe, 64 78		513	58
"	12.	" L. & Hebart, 172; self, 46 14		218	14
"	18.	" Crampton, 19 80; sundries, 130		149	80
"	21.	" Squires, 200; self, 50		250	
"	26.	" sundries		97	29
446		*John P. Cook's ac.*—Continued.		97	29
1858.					
July	2.	To sundries		97	29
"	3.	" Rambo & C		300	
"	"	" Nat. Squires, 200 80; L. & N., 20 87		221	67
"	7.	" Gaddens, d'ft		802	58
"	"	" H. H. Smith, 97 67; self, 32 82; Rambo, 50		180	49
"	13.	" T. C. Reid, 71 40; self, 15		86	40
"	14.	" ch. N. Squires, 72; Eddie, 30		102	
"	16.	" J. C. Reid, 259 52; sundries, 55		314	52
"	27.	" sundries, 208 70; (Aug. 2,) sundries, 488 20		696	90

Aug.	4.	" Wiley, 33 17; city taxes, 1858, 543 76	576	93
"	16.	" J. C. Todd, 18 80; sundries, 410	428	80
"	18.	" Wadsworth, 43 78; Dr. Pernicci, 29 30	73	08
"	25.	" self, 44; Squires, 300; sundries, 315	659	
Sep.	11.	" J. H. Martin, 100; Rambo & C., 30	130	
"	14.	" L. Hebert, 62 60; Nat. Squires, 150	212	60
"	27.	" N. E. Cutter, 25; Simmons, 267 18	292	18
Oct.	7.	" redemption, 80 acres, 1857, tax	6	10
"	9.	" rent to Wm. Allen	202	50
"	12.	" Davis & Tipton	10	
"	13.	" L. Hebbard	407	48
"	23.	" G. T. Elliott, 10 20; sundries, 439	449	20
"	26.	" Leonard & H., 121 98; same, 148 77	270	75
"	27.	" thrashing, 10; (Nov. 3,) sundries, 186 39	196	39
Nov.	4.	" J. C. Washburn, 4 mo's. d'ft on N. Y.	600	
"	5.	" John D. & M. Williams	46	44
"	18.	" ch. E. L. Cook	25	
"	20.	" H. H. Smith	41	79
"	"	" insurance	25	
"	23.	" T. H. McGhee	161	89
"	26.	" Skinner's balance	11	
"	27.	" C. L. Wood	100	
"	29.	" V. R. Rowe	120	
Dec.	1.	" sundries	353	34
"	3.	" Insurance	120	
"	7.	" check, "ent."	25	
"	10.	" McIntosh, 25; gas, 17 80	42	80

447 DR. *John P. Cook's ac.*—Continued.

1858.				
Dec.	15.	To ch. Davis & Tipton	25	
"	17.	" St. Luke's Church	300	
"	23.	" " " "	882	30
"	24.	" " " "	1,217	65
"	"	" Martin, 32; Boston, 218 85	250	85
"	31.	" sundries	333	03
1859.				
Jan'y.	3.	" Dan Redeman	40	
"	8.	" sundries, 225 81; gas, 16 95	242	76
"	11.	" Johnson Co. tax	10	
"	13.	" Channon, 10 50; Cannon, 61 75	72	25
"	18.	" insurance	52	
"	19.	" H. W. Lee	495	57
"	24.	" H. H. Smith	50	37
"	28.	" J. D. Bourne	110	
"	29.	" Nat. Squires	50	
Feb.	1.	"	359	98
"	2.	" Scott Co. Park Ass	25	
"	3.	" " " tax	271	94
"	4.	" B. Andrews	254	45
"	9.	" sundries	294	52
"	14.	" Rowe & Hyde	197	70
"	19.	" sundries	131	25
"	21.	" Sweeny & ex	380	62

"	22.	" Squires, 100; Rowe, 1,120	1,220	
"	24.	" Jno. Craig	22	90
"	25.	" Rambo & C	29	30
M'ch	5.	" 31 44; Sheffield Co., 18	49	44
"	11.	" ch. W. L. Cook	139	
"	11.	" R. R. freight	71	32
"	17.	" G. B. Sargent's d'ft	433	03
"	19.	" Gould & Steere, 275; sundries, 488 66	763	66
"	21.	" Jno. Marten	250	
"	22.	" W. L. Cook	505	20
"	24.	" Dr. Cheeseborough	48	
"	30.	" sundries	135	70
Apr.	2.	" Rambo	170	91

448 DR. *Jno. P. Cook's ac.*—Continued.

1859.

Apr.	7.	To Squires	100	
"	11.	" Johnson Co. taxes	15	55
"	12.	" Wm. Morrison	1,050	40
"	13.	" Hugh, for cow	28	
"	14.	" ch. V. R. Rowe	23	
"	15.	" Crampton, 16 34; Sickles & Bro., 72 00	88	35
"	16.	" sundries, 425 50; mare & colt	525	50
"	21.	" J. C. Todd	13	80
"	26.	" Dan Redman, 26; Webb, 7 16	33	16
May	2.	" T. H. McGhee, 176 09; M. Grace, 17 50	193	59
"	7.	" Jno. Martin, 50; sundries, 170	220	
"	16.	" self, 40; D. Gould, 210	250	
"	19.	" Gould & Steere	77	18
"	"	" Nat. Squires	50	
"	21.	" J. Gardiner	160	
"	23.	" self, 30; Steere, 56 93	86	93
"	28.	" Macham, 9 55; d'f't on N. Y., 81 60	91	15
"	31.	" J. C. Crampton, 7 25; E. Nugent, 179	186	25
June	2.	" Wupperman, 30 70; sundries, 40	70	70
"	4.	" self, 20; J. J. Anderson, 50	70	
"	8.	" Sheffield coal, 13 50; hay, 37 80	51	30
"	10.	" H H. Smith, 44 94; self, 10	54	94
"	11.	" Jno. Morton, 100; Garvin, 15	115	
"	20.	" Jacoby, 12 90; sundries, 50	62	90
"	25.	" Wm. Morrison	20	
"	28.	" sundries	36	90
July	9.	" 13 77; J. C. Read, 7 95	21	72
"	12.	" Morton, 100; Crandall, note	125	
"	18.	" d'ft, N. Y., 82 83; self, 30	112	83
"	25.	" Mrs. J. P. C., 15; self, 5; Squires, 60	80	
Aug.	2.	" sundries in drawer	112	15
"	3.	" J. C. Todd, 17 15; L. Hibberd, 150	167	15
"	11.	" Squires, 30; d'ft on Chicago, 37 40	67	40
"	20.	" Jno. Morton, 30; H. H. Smith, 21 90	51	90
"	27.	" sundries, 290; C. Lambert, 40	330	
"	29.	" interest, 22; 394 81	416	81
"	31.	" sundries, 24 48; (5 Sep.,) boys' school, 50	74	48

Forward:

449 *John P. Cook.*

1859.				
Sep.	16.	To Mrs. Cook, 20; Smith & Co., 34	54	
"	22.	" city taxes, 1859	394	
"	23.	" Parker & Edwards, "McCoy matter"	815	17
"	"	" Cook, S. & P., "R. I." " "	1,402	28
"	"	" J. D. Bourne	25	
"	29.	" Mrs. Cook, 10; sundries, 171 35	181	35
Oct.	3.	" Wallace	38	
"	7.	" Hill, Allen & Co.; Proctor, note; McCoy	569	36
"	11.	" Dan Reardon	30	
"	15.	" N. Y. d'ft	152	25
"	18.	" H. H. Smith	68	98
"	20.	" fencing timber	48	26
"	"	" W. L. Cook	558	17
"	26.	" Jno. L. Davies	116	
"	27.	" French & Davies	84	80
"	28.	" J. C. Todd, 16 40; 7 08	23	48
"	"	" C., S. & P., in settlement, 2 notes; McCoy	1,435	44
"	29.	" Parker & Edwards; do	723	45
"	"	" Dan Reardon	15	
"	31.	" Anderson, Sargent & Co.; McCoy	749	66
"	"	" J. C. Proctor	582	72
Nov.	2.	" Jno. McIntosh	50	
"	19.	" sundries, 368; sundries, 70	438	
"	25.	" Humphrey, 30; self, 14	44	
Dec.	5.	" T. C. Reed, d'ft on N. Y. & ex	102	
"	6.	" Wm. Marrian, 40; D. Gould, 28 35; T., 10	78	35
"	10.	" Jno. D. Bryant, "Barrow House"	1,220	18
"	12.	" Eldridge & Williams	38	37
"	22.	" A. H. Davenport & J. P. Cook, bal. note	69	24
"	23.	" R. H. Rogers	40	
"	24.	" sundries	13	35
"	26.	" Florence, 75; Menvin's bill, 1,734 57	1,809	57
"	30.	" Denning's d'ft on Chicago	65	55
"	"	" Bill	355	26
1860.				
Jan.	2.	" Florence	3	
"	3.	" John Weller	8	33
"	"	" Geo. Hyde	30	

Forward:

450 DR. *John P. Cook.*

1860.				
Jan'y	3.	To bal. of cash	2,912	10
"	5.	" school orders	8	40
"	"	" M. & M. R. R. coupon	35	
"	7.	" cash		50
"	9.	" do	2	
"	"	" int. Brown note	2	56
"	10.	" R. H. Parks & Co	109	37
"	11.	" lumber	109	02
"	"	" cash		45
"	"	" Florence	2	

"	12.	"	cash	3	15
"	"	"	Rambo		50
"	14.	"	d'ft in Park B'k	100	
"	25.	"	cash		55
"	28.	"	insurance	50	
"	30.	"	Todd	17	90
Feb.	2.	"	J. Weller	6	33
"	3.	"	Hayes		24
"	4.	"	sundries	475	37
"	9.	"	Cedar Co., order	45	
"	13.	"	recording, La Gray	1	50
"	"	"	sundries	2	17
"	20.	"	.....	200	
"	24.	"	Wm. Allen	44	
"	27.	"	d'ft N. Y.	7	17
"	29.	"	cash		25
M'ch	1.	"	N. Squires	500	
"	13.	"	N. Stanchfield	6	
"	15.	"	d'ft on Sargent for A. H. Owens	400	
"	17.	"	J. C. Todd	5	30
"	"	"	school order	7	62
"	28.	"	C., L. & Cook	250	
"	31.	"	self	118	
Apr.	9.	"	Wupperman Hall	17	35
	10.	"	school order	231	97
	25.	"	land w't	72	

451 *John P. Cook.*

1860.					
June	23.	To	Le R. Dodge, note	630	
"	"	"	Collins	15	
July	14.	"	Rambo	150	
"	21.	"	Le Claire City, coupon	36	25
Aug.	13.	"	B. & P., checks	40	
Sep.	15.	"	French & Davies	36	13
Dec.	12.	"	.....	385	84
"	17.	"	Burr Andrews	219	30
"	"	"	" "	000	00
"	"	"	Dr. Fountain	20	
"	26.	"	W. L. Cook	1,324	
"	31.	"	G. H. French, treas.	514	20
1861.					
Jan'y	15.	"	Pat. McManus	90	
"	"	"	Nat. Squires	118	17
"	21.	"	Wm. Van Tuyl	305	80
"	"	"	Jno. Martin	470	
Aug.	7.	"	Pat. McManus	50	
"	16.	"	Le R. Dodge	50	
Oct.	25.	"	C. H. Davies, note	117	88

John P. Cook. CR.

1858.					
May	11.	By	Tallman, Powers & McLean	1,000	
"	"	"	d'ft on N. Y.	1,000	
"	13.	"	Hemming & Woodruff	349	94

June	2.	" cash		100	
Aug.	24.	" Duncan		72	66
"	31.	" A. J. Hyde		162	
Sept.	14.	" cash	N		
Oct.	2.	" Lake Super. Co.		428	19
Dec.	17.	" G. B. S.		2,824	
1859.					
Feb.	22.	" cash		1,572	
Apr.	5.	" do.		70	

452 *John P. Cook.* CR.

1859.					
Apr.	12.	By A. Lounderback		1,200	
May.	11.	" G. H. French		514	20
"	21.	" McManus		263	09
Aug.	6.	" Land in Johnson Co		450	
Sept.	23.	" E. McCoy		3,221	58
Oct.	28.	" E. W. Thomas		3,134	25
Dec.	17.	" W. Wray		309	17
"	19.	" Lindley		175	
"	21.	" Thomas		5	
"	28.	" Dougherty		4	
"	29.	" Hoffman		3	06
"	"	" Lamar		6	90
"	30.	" Florence		4	
"	"	" cash		1	
"	31.	" telegraph		10	
"	"	" Krune			45
"	"	" De France		5	
1860.					
Jan'y	3.	" Billon			81
"	"	" B. F. Boyden		2	
"	4.	" E. Cook		160	
"	"	" Cook, L. & Clark		10	
"	"	" Le Claire, register		9	45
"	5.	" gas bill		18	60
"	7.	" Florence		25	
"	"	" cash			75
"	"	" P. office		2	
"	9.	" De France		4	
"	"	" Dalzell		367	62
"	10.	" pencils			25
"	11.	" Wray		15	
"	14.	" Williams		45	39
"	"	" Ira Cook		50	25
"	"	" Dillon		30	
"	"	" Patterson			25
"	16.	" Van Tuyl		10	
"	"	" C. Decker		3	—

453 *John P. Cook.* CR.

1860.					
Jan'y	20.	By sundries		35	15
"	"	" W. Wray		30	
"	21.	" De France		5	

"	25.	"	Gazette	2	
"	28.	"	Cone	33	
"	"	"	A. Bannon	10	
"	"	"	State Bank	9	
"	30.	"	Clark	5	
"	"	"	Florence	5	
"	"	"	De France	3	
Feb.	2.	"	M. & Drury	100	95
"	"	"	Wray	21	83
"	"	"	P. & Edwards	50	
"	"	"	stamps	2	50
"	"	"	Van Tuyl	10	
"	3.	"	gas bill	13	10
"	"	"	telegraph bill	11	18
"	4.	"	postage	4	
"	"	"	cash	100	
"	"	"	discount, M. & D.	62	83
"	"	"	Supreme C.	55	10
"	7.	"	E. E. Cook	1	80
"	10.	"	Lagty	17	
"	21.	"	Van Tuyl & Co	11	50
"	25.	"	N. Y. d'ft	51	25
"	"	"	Comm's		50
"	"	"	Frazer	1	
"	27.	"	cash	3	
"	28.	"	do	3	30
M'ch	2.	"	Florence	9	
"	3.	"	Van Tuyl	5	
"	6.	"	Williams	7	85
"	10.	"	Florence	5	
"	13.	"	E. Cook	175	
"	21.	"	Spellman	100	
"	24.	"	M. & M. R. R.	1,737	06

Forward:

454 *John P. Cook.* CR.

1860.

Mar.	28.	By expenses, Keokuk		21	
"	"	"	H. Price	76	54
"	30.	"	E. Cook	13	
Apr.	4.	"	Andarn	105	
"	10.	"	cash	1	
"	"	"	wood	4	50
"	"	"	C. B. Waite	192	13
"	14.	"	insurance	7	75
"	"	"	cutting wood		80
"	17.	"	R. Palmer	30	13
"	21.	"	H. B. Matthews	22	50
"	25.	"	De France	20	
"	28.	"	taxes	13	45
May	5.	"	J. H. Sullivan	90	
"	14.	"	d'ft on S. & D., fav. J. D. Bryant	1,220	18
June	23.	"	Steinhelber, con.	561	
July	14.	"	bay horse	150	
"	"	"	D. Ruggles	2,000	

"	"	"	interest	138 33
"	21.	"	d'ft Dessaint	87
Dec.	26.	"	French & Davies	90
1861.				
M'ch	27.	"	Tipton, taxes	500
July	23.	"		5
"	31.	"		11 67
Aug.	3.	"	int. in prop. in Brady Co	50
"	"	"	" " farm on Dubuque road	50
"	"	"	homestead on Brady st	50
"	"	"	J. C. Hancock's note	20
"	"	"	42 shares M. & M. R. R.	5
"	"	"	int. in 100 shares Sheffield Co	50
"	"	"	" " $11\frac{37}{100}$ acres, Big Island	15 50
1862.				
May	17.	"	J. McCosh	1,500
No.	1.	"	int. in	1 00

(Endorsed:) John P. Cook's ac. with Cook & Sargent, from gen'l ledger "B."

455

No. 2.

DR. "EXHIBIT 21."

1858. *Ebenezer Cook in ac. with Cook & Sargent.*

Apr.	1.	To d'ft on N. Y. & ex., 153; (6,) cash, 10; (7,) gas, 12 05	175 05
"	16.	" self, 10; beam, 50; (19,) C. & F., 35 49; (21,) int., 27 50	122 99
"	22.	" self, 45; cash, 20; (24,) self, 20; (27,) self, 20; st., 21 50	126 50
May	1.	" J. Plem, 25; self, 10; gas, 5 40; self, 6; McG., 12 60; self, 20	79
"	10.	" self, 25; T. W. McC., 150; W. C. Porter, 300; self, 25	500
"	17.	" 40; J. M. Cannon, 459; McC., 50; P. M., 67 45	607 45
"	28.	" 123 5; T. W. McC., 351 99	364 34
June	1.	" Taxes, 19 75; McM. W., 531 76; self, 50; 39 50	620 61
"	16.	" self, 20; cash, 154; gazette, 3	177
July	3.	" ch. 150, B'k No. A., 50; C. Dole, 50; Kett, 250; J. C., 31 80	381 80
"	12.	" Porter, 500, check, 180; 30; G. H., 6; 38 75.	254 75
Aug.	3.	" 960 20; d'ft, 50; bill, 19 22; sundries, 59	1,088 42
Sep.	9.	" sundries, 32 87; Sheffield, 130; 70; sundries, 72 70	305 57
Oct.	12.	" sundries, 69 65; (21,) 23 95; (26,) 20 85	114 45
Nov.	3.	" Louderback, 900; (5,) Williams, 36 72; 40 91; St. L., 50	1,027 63
"	23.	" sundries, 85; (29,) sundries, 70	115
Dec.	4.	" sundries, 79; (8,) sundries, 45 85; (sundries,) 28 24	153 09
"	17.	" sundries, 145; (20,) 928 75; (30,) sundries, 1,00 20	2,085 45

1859.

Jan'y.	3.	" ch., 20 05; (4,) sundries, 20; (7,) self, &c., 33 80	73	85
"	8.	" Morton, 100; Barrows, 50; (10,) sundries, 62 27; bearer, 511 39	723	66
"	11.	" sundries, 179 25; (15,) H. Power, 50	229	25
"	21.	" check city note, 3,000; (24,) St. Louis, 43 33	3,043	33
"	31.	" co. taxes, 826 66; sundries, 48 55	875	21
Feb.	1.	" B. & P., 82 66	82	66
"	2.	" Scott Co. Park, 25; (4,) sundries, 18 80; Kenzie, 100	143	80
"	21.	" sundries, 25; (26,) sundries, 27 25	52	25
M'ch	1.	" Dow missions, 100; Thorington, 50; (3,) sundries, 313 54	463	54
"	8.	" sundries, 47 25; missions, 15; bank stock, 550	612	25
"	12.	" sundries, 21; (15,) sundries, 50; (16,) sundries 45	116	
	22.	" bank stock, 310; (23,) sundries, 41 15	351	15
Apr.	4.	" express, 10; L. Shricker, 990; sundries, 63 98	1,063	98
"	8.	" sundries, 15 90; (11,) sundries, 245; (20,) sundries, 24 68	281	58
"	23.	" sundries, 338 15; (26,) sundries, 324; (26,) sundries, 334 63	992	78
"	27.	" sundries, 211 74; (30,) sundries, 250 98	462	72
May	6.	" Sheffield Co., 721 19; (17,) sundries, 59 37; Leagley, 68 30	848	86

456 *E. Cook*—Continued.

1859.

May	23.	To sundries, 124; (27,) sundries, 40 50; (30,) sundries, 33 89	198	39
June	1.	" McClelland, 9 87; packet co., 138 65	148	52
"	1.	" packet co., 7 50; same, 18 75; (8,) Porter, 243 96; tax, 16 26	286	47
"	9.	" Jno. Harrington, 40; (11,) Adams, 20; Dunn, 25	85	
"	11.	" Weaver, 42; E. C., 50; Cannon & F., 163 28	255	78
"	17.	" Shepperd, 32 50; self, 10; Morton, 100	142	50
"	24.	" self, 25; (27,) Traidy ch., 150; (27,) self, 25	200	
"	27.	" Cray, 13 40; (29,) H. C. Porter, 200; (5 July,) self, 25	238	40
July	6.	" Dunn, 98 44; (7,) Sickles & Bro., 28 05	126	49
"	8.	" ch. self, 25; (15,) ch. Millet, 75	100	
"	16.	" ch. self, 10; (19,) R. M. Littler, 25; (21,) self, 20	55	
"	27.	" ch. self, 10; (28,) expenses, 30; exp. east, 100	140	
Aug.	3.	" J. C. Tood, shoes	9	90
"	4.	" ch. L. C. Dessaint	7,690	
"	10.	" recording 3 deeds, 2 60; ch. G. B. S., 50	52	60
Sep.	12.	" checks on Clark, Dodge & Co., $25, $50, $20, $94 15	189	15
"	"	" painting carriage, 30; road tax, 19 20	49	20
"	16.	" ch. Mr. Cook, 50; (19,) A. C. Billon, 15; self, 10	75	
"	22.	" city taxes, 1859	756	93
"	26.	" self, 25; (27,) self, 10; (28,) miner, 24	59	

Oct.	3.	" Walter & Rogers, coal, 62 81; (12,) Henry, 30; Sargent & D., 125	217 81
"	14.	" ch. W. & H., 10; (15,) butter, 23 60; self, 10.	43 60
"	17.	" G. W. Ells & Co., 22 30; Henry, 30; (20,) lumber, 9 52	61 82
"	20.	" fencing timber, 9 52; Finley judgment, 200	209 52
"	21.	" self, 15; (22,) Finley judgment, 1,730	1,745 75
"	22.	" J. H. Morton, 161; J. L. Coe, 28 08	189 08
"	24.	" H. Leonard, 32 35; pay't, 30; J. C. Todd, 5 50; V. R. R., 10	77 85
"	29.	" P. Merwin, 29 48; (2 Nov.,) ch. self, 20	49 48
Nov.	5.	" Clark, Dodge & Co., 170 84; (11,) self, 10; H. Powers, 154 25	333 09
"	18.	" State Bank stock, 88 40; Washburn, 1 63; sundries, 40	130 03
Dec.	9.	" French & Davies, 7 27; (10,) Clark, Dodge & Co., 214 58	221 85
"	12.	" self, 10; J. Cray, 11 50; Burr & Swift, 41 66	63 16
"	27.	" Rev. Mr. Louderback	700
"	19.	" J. E. Henry, a'd't'r, 200; (22,) self, 100; self, 500	800
"	24	" self, 5; Episcopal fund, 32; self, 44	81
"	31	" notes, Episcopal fund	515 82

457 DR. *E. Cook*—Continued.

1860.

Jan'y	3.	To self, 20; self, 600; (4,) self, 160; Parks, 10 75	790 75
"	12.	" cash, 31 29; (20,) self, 10; (27,) J. C. D., 11	52 29
"	28.	" insurance, 75; Krum, 40; (30,) Todd, 6 95; Ray, 1	122 95
Feb.	3.	" ½ coll., J. L. Reed, 133 88; steamer checks, 50	183 88
"	4.	" cash, 11 25; (8,) d'ft on Chicago, 188	199 25
"	8.	" Steere, 1 60; (13,) d'ft on N. Y., 5 80; Todd, 4 50	11 90
"	14.	" cash, 10 65; (27,) cash, 2 70	13 35
March	1.	" cash, 16 98; Glaspell, 22 40; Rave, 8	47 38
"	5.	" Sickles, 2; (13,) J. P. Cook, 175; (15,) Chicago d'ft, 49 50	226 60
"	15.	" school orders, 271 40; (16,) Benter, 1	272 40
"	21.	" M. Coffey, 25; (22,) Cannon's stock, 130	155
"	22.	" N. Y. d'ft, 17 14; (23,) cash, 12; (24,) J. Parker, 50	79 14
"	28.	" cash, 6; (30,) J. P. Cook, 13; self, 300	319 —
Apr.	3.	" Hoffman, 4 45; (7,) cash, 6 44; (10,) cash, 19 05	29 94
"	10.	" cash, 2 57; (12,) cash, 33 75; (17,) cash, 64 29	100 61
May	19.	" G. W. Ells & Co., 2; (23,) job, C., D. & Co., 96 68	98 68
"	26.	" John Owens & Co., 50; (June 1,) cash 1 50	51 50
June	12.	" cash, 12; (13,) Grant, 77 45; (15,) pens, 8	97 45
"	16.	" cash, 1 50; (20,) Glaspell, 14 42	15 92
Aug.	1.	" D. E. Bern, 11; (18,) B. & P. checks, 6; (23,) cash, 1 69	18 69
"	27.	" cash, 29; (Sep. 3,) cash 1 50; (5th,) cash, 8	38 50

Sep.	17.	" B. Andrews, $75; (19,) cash, 77 92	152	92
"	28.	" cash, 39 50; (29,) cash, 1 50	41	
Oct.	5.	" W. H. Rahm, 23 43; (10,) cash, 1 50	24	93
"	19.	" balance of J. Brewster	1,188	20
"	22.	" cash, 35 50; (29,) cash, 17 23	52	73
Nov.	1.	" cash, 1 50; (16,) d'ft on N. Y., 81 12	82	62
"	22.	" cash, 14 50; (27,) cash, 95; (Dec. 1,) cash, 1 50	110	90
Dec.	3.	" cash, 40 65; (11,) Chicago d'ft, 23 75	64	40
"	15.	" credited Cook, L. & Cook	60	
"	17.	" Burr Andrews	60	
"	31.	" J. W. Drury, cash	531	53
1861.				
Jan'y	10.	" cash	5	18
Feb.	7.	" T. Dermoody	8	
1862.				
Aug.	16.	" Le Roy Dodge	16	

458 *Ebenezer Cook.* CREDIT.

1858.				
Apr.	1.	By balance ledger "A"	9,637	42
"	27.	" Sheffield Coal Co	1,062	50
May	8.	" county order	18	20
"	"	" H. Garret	92	
"	27.	" cash	450	
June	23.	" pew-rent collection	25	
July	3.	" deposit in B'k No. America	400	
"	8.	" H. A. De France	50	10
"	17.	" Iowa City, ch	16	05
"	"	" T. W. McGhee	30	
"	21.	" W. W. Hannah & Co	27	
"	22.	" cash	23	
"	29.	" d'ft on Chicago	16	
Aug.	3.	" cash	42	70
"	14.	" do	61	
"	16.	" do	12	
"	26.	" do	30	
Sep.	1.	" collection stock	440	
"	16.	" currency	75	
"	"	" G. B. S., pew-rent	40	
"	27.	" J. W. Churchill	29	
"	28.	" T. D. Eagal	20	
Oct.	2.	" Lake Superior adventure	1,712	75
"	14.	" cash of J. C. Matthes	500	
Sep.	14.	" cash	80	
Dec.	7.	" d'ft of J. H. Glaspey	350	
	8.	" G. B. Sargent	883	75
	16.	" ch. on Green, Minett & Co	25	
1859.				
Jan'y	3.	" Geo. B. Sargent	4,000	
"	5.	" ditto	511	39
"	20.	" J. M. Parker	15	
Feb.	7.	" cash	25	
"	16.	" D. C. Trad	10	
M'ch	11.	" J. C. Washburn	100	
"	22.	" cash	26	
"	18.	" do	80	

459 *Ebenezer Cook*—Continued. CREDIT.

1859.					
M'ch	29.	By cash		150	
Apr.	30.	" "		80	
May	5.	" "		100	
"	"	" G. L. Davenport's check		50	
"	6.	" cash for coal		154	70
"	18.	" cash		60	
"	25.	" 14 shares State B'k stock		840	
"	28.	" check, C. Krum		105	
"	"	" " "		153	39
"	31.	" cash		37	
June	9.	" J. M. F. Hall for land		250	
"	18.	" C. Krum		200	
"	26.	" cash		200	
Aug.	17.	" Syyder for rent		15	
Sep.	7.	" deposit with Clark, Dodge & Co		9,500	
"	14.	" John S. Seymour's check		152	
Oct.	3.	" Snyder for rent		15	
Nov.	14.	" cash		200	
"	29.	" "		100	
Dec.	6.	" Rapids Packet Co		958	14
"	19.	" T. Saunders		1,458	85
"	"	" Sarah M. Saunders		800	
"	"	" J. W. Churchill		2,928	66
"	20.	" J. M'Manus, ch		335	
"	"	" E. S. Barrows		667	48
"	21.	" cash		211	
"	22.	" Mrs. Jane Pruet, c't'f. deposit		15	
"	23.	" Isaac Maas, ch		197	01
"	"	" H. Strob, certificate deposite		500	
"	"	" Mrs. C. Westphall," "		300	
"	"	" Mrs. C. Westphall		20	
"	24.	" Pat. Grady		5	
"	"	" J. Trend		20	
"	26.	" Krum's expense to Des Moine		28	35
"	27.	" p'd Mrs. Pruet		15	
"	"	" Emma C. George		10	
"	"	" Mrs. P. A. Baker		100	

460 *Ebenezer Cook*—Continued. CREDIT.

1859.					
Dec.	31.	By Pat. Grady		10	
1860.					
Jan'y	3.	" Mrs. Rea		25	
"	7.	" Corbin & Dow		13	
"	10.	" Dennis Callahan		30	
"	12.	" Florence		19	
"	"	" James Grant		1	13
"	"	" Grant, True & Dow		300	
"	14.	" James Preist		20	
"	"	" gazette		1	50
"	17.	" for blanks			50
"	18.	" Cope		1	

"	"	"	Lewis Drew	36	83
"	"	"	p'd 3 d'fts on S. & Dixwell	155	96
"	19.	"	J. M. Bowling	5	
"	"	"	c't'f deposit to Mr. C. C. C	69	29
"	"	"	hauling coal	1	
"	25.	"	C. Decker	5	
"	26.	"	Florence	25	
"	28.	"	17 shares State B'k	1,190	
"	"	"	Barman	40	
"	30.	"	recording, &c	1	50
"	"	"	express charges	2	
"	31.	"	Jam. Preist	15	
Feb.	1.	"	J. McCosh	10	20
"	3.	"	State Bank		64
"	"	"	Florence	11	
"	"	"	d'ft on N. Y	18	39
"	4.	"	Kinkead		53
"	"	"	A. Le. Claire by sale of real estate	2,500	
"	"	"	envelopes	1	75
"	"	"	Cook & Sargent, old firm, ½	2,559	77
"	"	"	ac. ⅓	55	11
"	"	"	paid De France	5	
"	6.	"	bal. N. Y. d'ft, &	21	40
"	"	"	Decker, 12; Florence, 9	21	
"	"	"	Florence & c't'f deposit	170	
"	8.	"	½ am't to credit Cook & Sargent	44	20

461 *Ebenzer Cook*—Continued. CREDIT.

1860.					
Feb.	8.	By d'ft on Boston, & ex			82
"	9.	" Cash, 11 76; expenses, 26 05		37	81
"	10.	" F. McDonald		10	
"	13.	" Crampton		13	31
"	16.	" J. Van Tuyl		5	
"	"	" J. W. Moab, land		536	25
"	17.	" J. W. Pierce, protest fees		3	25
"	27.	" Patterson's bill		9	05
"	"	" Sundry expenses		16	32
"	28.	" bal. of c't'f. of deposit, 12,944		9	62
"	"	" "Florence," redeemed		7	
M'ch	2.	" De France		5	
"	6.	" McCosh		1	60
"	"	" W. H. Dedrich		110	
"	7.	" p'd gas bill		4	52
"	9.	" Geo. Howe		2	
"	10.	" M. Renihan's c't'f. of deposit		10	
"	"	" T. B. Van Tuyl in full		13	
"	13.	" D. Callahan		10	
"	14.	" John Burnsides		188	85
"	"	" H. Priest's check		23	42
"	16.	" L. Grabbe for "Beppo"		225	62
"	23.	" N. Kuhnen		150	
"	"	" N. Kuhnen			23
"	"	" D. Callahan		20	
"	24.	" M. & M. R. R. Co		4,367	52
"	"	" H. A. De France		5	

"	28.	"	Dr. Fountain	7	09
"	"	"	C. Sheridan	4	
"	29.	"	D. Callahan	30	
"	31.	"	De France	6	
"	"	"	Florence	72	
Apr.	2.	"	John Dalyell's check	125	
"	3.	"	p'd tellegrams		80
"	6.	"	gas bill	1	10
"	9.	"	Sundry small checks	2	58
"	12.	"	Florence	2	

462 *Ebenezer Cook*—Continued. CREDIT.

1860.

Apr.	12.	By	cash	22	
"	13.	"	paid Gas co., "coke"	11	34
"	"	"	expenses trip east, Aug., '59	150	
"	"	"	" " " Sep., '59	125	
"	"	"	redeemed Florence	5	
"	17.	"	cash	65	
"	"	"	recording	2	
May	14.	"	½ expense of trip to Florence	53	75
"	15.	"	coal, postage stamps, &c	12	44
"	"	"	Florence	20	
"	16.	"	paid James High on c't'f. of deposit	100	
"	19.	"	" De France " " " "	10	
"	"	"	Florence	1	
"	25.	"	J. Winkless, 6; Florence, 5	11	
"	30.	"	D. Callahan	2	
"	31.	"	Smith & Remington	1	45
"	"	"	H. A. De France	5	
June	4.	"	c'h. Dav. Packet Co	11	59
"	"	"	" Rapids Packet Co	4,695	42
"	"	"	d'ft on Geo. Smith & Co., protested	500	
"	11.	"	cas. c't'f. deposit L. Beyer	26	35
"	"	"	cash p'd ac. land	2	44
"	12.	"	cash	20	
"	13.	"	do	59	55
"	16.	"	do., 6 50; VanTuyl, 18	24	50
"	20.	"	Florence	10	
"	27.	"	Lomas	5	
Aug.	9.	"	Patterson	2	25
"	22.	"	Florence	152	
"	28.	"	cash	3	
Sept.	1.	"	expenses to Keithsburg	10	20
"	29.	"	½ T. P. Green's co. taxes, '59	47	28
Oct.	5.	"	J. Dunn's c't'f. deposit	35	
"	"	"	p'd Geo. McGawley	86	74
"	22.	"	remittar F. B. Hayes	128	68
"	23.	"	Florence	7	
"	"	"	cash	1	78

463 *Ebenerzer Cook*—Continued. CREDIT.

1860.

Oct.	24.	By	p'd d'ft 32,403 and protest	52	
"	25.	"	N. Y. ex., to pay taxes	77	77

"	29.	"	J. A. High, c't'f. dep	253	07
"	"	"	pren. of insurance	100	
Nov.	1.	"	p'd Chapman's taxes	77	
"	"	"	" J. C. Van Tuyl	100	
"	14.	"	N. Y. exchange	204	25
"	16.	"	John Dalzell	210	
"	"	"	sundry expenses	8	
"	21.	"	Benny VanTuyl	9	10
"	24.	"	T. W. McClelland	5	
"	27.	"	recording mortgage	1	
"	"	"	Florence	4	50
"	30.	"	do	9	
Dec.	1.	"	insurance	8	25
"	3.	"	Florence	3	
"	15.	"	C. Krum	100	
"	19.	"	Cook & Sargent—old firm	815	71
1861.					
Jan'y.	1.	"	paid Ira Cook	25	30
"	10.	"	Florence	3	
"	23.	"	p'd J. H. Morton	4	
"	"	"	" Sam. Parker's taxes	5	40
"	"	"	" Jno. E. Henry's check	21	22
July	20.	"	" A. Scherar's c't'f. deposit	10	
"	31.	"	" " " "	6	67
"	"	"	" J. E. Taylor's c't'f. deposit	33	50
Aug.	3.	"	" assignees of Cook & Sargent	58	56
"	7.	"	N. E. ¼ sec. 32, T. 78, R. 23 E	4,550	
M'ch.	24.	"	G. W. Fenno's note	10	
Sep.	30.	"	Cook & Sargent	319	
"	"	"	H. Leonard's due-bill to L. H. Fuher	6	71
1862.					
Nov.	"		p'd E. C. VanTuyl c't'f. deposit	12	
"	"		sundry assets	9	35

(Endorsed:) Ebenezer Cook's ac. with Cook & Sargent, from gen'l ledger "B."

No. 3.—*Defendants' exhibits, marked Nos.* 1 *to* 17.

464 Page 4. EXHIBIT 1.

$4,500. DAVENPORT, 30*th June*, 1859.

Six months after date we promise to pay to the order of Geo. L. Davenport four thousand five hundred dollars, value received, at office of Clark, Dodge & Co., N. Y.

(Signed) WM. INSLEE & CO.

465 (Indorsed:) (S'g'd) Cook & Sargent. Geo. B. Sargent. Pay Bank of America, N. Y., or order. Paid by Exchange Bank, Dec. 29, '59. 3174.

466 EXHIBIT 2.

$5,000. DAVENPORT, 6*th August*, 1859.

Six months after date pay to the order of Cook & Sargent, at the office

of Clark, Dodge & Co., New York, five thousand dollars $\frac{00}{100}$, value received, which charge to account of—

(Signed) COOK & SARGENT.

GEO. L. DAVENPORT, *Davenport, Iowa, Feb.* 6.

(Indorsed:) Accepted. Cancelled.

467 (Indorsed:) Cook & Sargent. Geo. B. Sargent. Pay Merchants' Bank, N. Y., or order.

468 EXHIBIT 3.

$5,000. DAVENPORT, *9th August*, 1859.

Six months after date pay to the order of Cook & Sargent, at the office of Clark, Dodge & Co., New York, five thousand dollars $\frac{00}{100}$, value received, which charge to account of—

(Signed) COOK & SARGENT.

To GEO. L. DAVENPORT, *Davenport, Iowa.*

(Indorsed:) Accepted: Geo. L. Davenport.

469 (Indorsed:) Cook & Sargent. T. R. Acly, esq., cash'r. Order. Settled at Washington Bank, Boston, Feb. 15, '60.

470 EXHIBIT 4.

$5,666. DAVENPORT, *30th June*, 1859.

Six months after date I promise to pay to the order of Cook & Sargent fifty-six hundred and sixty-six dollars, value received, at office of Clark, Dodge & Co., N. York.

(Signed) GEO. L. DAVENPORT.

(Indorsed:) 41,687. Cancelled.

471 (Indorsed:) Jeremy Drake, cash. Cook & Sargent, Davenport, Iowa. Geo. B. Sargent, Boston. W. B. Meeker, cash.

472 EXHIBIT 5.

$5,000. DAVENPORT, *3d February*, 1860.

Six months after date I promise to pay to the order of J. K. Fuller, cashier, five thousand dollars $\frac{00}{100}$; payable at Merchants' Bank, Boston, Mass. Value received.

(Signed) GEO. L. DAVENPORT.

(Indorsed:) Cancelled Feb. 3, August 3, 1866.

473 (Indorsed:) 7308. Cook & Sargent. Sargent & Dixwell.

474 EXHIBIT 6.

$4,500. DAVENPORT, *22d December*, 1859.

Six months after date I promise to pay to the order of Franklin Haven, pres't, four thousand five hundred dollars $\frac{00}{100}$, payable at the Merchants' Bank, Boston, Mass. Value received.

(Signed)

(Indorsed:) Cancelled. P. N. P. June 25, 1860. Notices to Premiser & Anderson same day.

475 (Indorsed):) Cook & Sargent. Sargent & Dixwell.

476 EXHIBIT 7.

$5,000. DAVENPORT, *3d February*, 1860.

Six months after date I promise to pay to the order of C. A. Putnam, cashier, five thousand dollars $\frac{00}{100}$, payable at Washington Bank, Boston, Mass. Value received.

(Signed)

(Indorsed:) Cancelled.

477 (Indorsed:) Cook & Sargent. Sargent & Dixwell.

478 EXHIBIT 8.

$5,666. DAVENPORT, *January 2nd*, 1860.

Six months after date I promise to pay to the order of Jeremy Drake, cashier, five thousand six hundred & sixty-six dollars, at Exchange Bank, in city of Boston, Mass. Value received.

(Signed) GEO. L. DAVENPORT.

479 (Indorsed:) Cook & Sargent. Sargent & Dixwell. Geo. B. Sargent.

480 EXHIBIT 9.

$5,666$\frac{67}{100}$. DAVENPORT, *August 27th*, 1860.

Sixty days after date I promise to pay to the order of Cook & Sargent, five thousand six hundred & sixty-six $\frac{67}{100}$ dollars, at the Freemen's Bank, Boston, Mass. Value received.

(Signed) GEO. L. DAVENPORT.

481 (Indorsed:) Waiving demand & notice, Cook & Sargent. Waiving demand & notice, Sargent & Dixwell. Waiving demand & notice, Geo. B. Sargent.

482 EXHIBIT 10.

$5,666. DAVENPORT, *June 30th*, 1860.

Sixty days after date I promise to pay to the order of Cook & Sargent, fifty-six hundred and sixty-six dollars $\frac{00}{100}$, payable at Freeman's Bank, Boston, Mass. Value received.

(Signed) GEO. L. DAVENPORT.

(Indorsed:) Cancelled. Saturday. P. N. P. Sept. 1, 1860. P. B. N. P. Fees & protest, $2 06.

483 (Indorsed:) Cook & Sargent. Geo. B. Sargent.

484 EXHIBIT 11.

$5,000. DAVENPORT, *Feb'y 23d*, 1860.

Six months after date we promise to pay to the order of Joseph A. Le Claire, five thousand dollars $\frac{00}{100}$, payable at Exchange, Boston, Mass. Value received.

(Signed) GEO. L. DAVENPORT.

(Signed) A. LE CLAIRE.

Due Aug. 23–26.
(Indorsed:) Saturday. P. N. P. Aug. 25, 1860. P. B. N. P. Fees & postage, $2 03.

485 (Indorsed:) J. A. Le Claire. Cook & Sargent. Sargent & Dixwell.

486 EXHIBIT 12.

$4,000. DAVENPORT, IOWA, *Jan'y 20th*, 1860.

Four months after date pay to the order of myself, at the office of Clark, Dodge & Co., New York, four thousand doll's, [dollars,] value received, and charge the same to account of—

(Signed) A. LE CLAIRE.

To GEORGE L. DAVENPORT, Esq., *Davenport, Iowa.*
(Indorsed:) 23 May.

487 (Indorsed:) 97 30. Check. Pay to the order of Messrs. Clark, Dodge & Co. Pay Bank of Commerce, in New York, or order.

488 EXHIBIT 13.

$4,000. DAVENPORT, IOWA, *May 20th*, 1860.

Four months after date pay to the order of myself four thousand dollars, at Clark, Dodge & Co., New York City, N. Y. Value received, and charge the same to account of—

(Signed) A. LE CLAIRE.

To GEO. L. DAVENPORT, *Davenport, Iowa.*
(Indorsed:) 23 Sep't. Accepted: Geo. L. Davenport.

489 (Indorsed:) 1461. A. Le Claire. Paid Clark, Dodge & Co.

490 EXHIBIT 14.

$150 00. DAVENPORT, IOWA, *June* 26, 1861.

Six (6) months after date we promise to pay to the order of Joseph A. O. Le Claire, one hundred & fifty dollars, value received, at Exchange Bank, Boston, Mass.

(Signed) A. LE CLAIRE.
GEO. L. DAVENPORT.

Dec. 26–29, 1861.
(Indorsed:) P. N. P. Dec. 28, '61. Saturday. P. B. N. P. Fees & postage, $1 53.

491 (Indorsed:) J. A. Le Claire. Pay Seth Pettee, esq., cash'r, or order. Jas. Mitchell, cash'r. Seth Pettee, cash.

492 EXHIBIT 15.

$1,650. DAVENPORT, IOWA, *June* 26, 1861.

One (1) year after date we promise to pay to the order of Joseph A. Le Claire, sixteen hundred and fifty dollars, value received, at Eexchange Bank, Boston, Mass.

(Signed)

June 26–29, 1862.

(Indorsed:) P. N. P. June 28th, 1862. Saturday. P. P. N. P. Fees & postage, $2 03.

493 (Indorsed:) One thousand fifty dollars of the Exchange Bank, Boston, $1,050. J. A. Le Claire. Pay Seth Pettee, esq., cash., or order. Jas. Mitchell, cash. Pay Seth Pettee, esq., cash'r, or order. Jas. Mitchell, cash. Rec'd 686 16, July 7, '63. G. H. Edwards, collect. Bills payable, $1,650. Charged 15 July, '63.

494 EXHIBIT 16.

$1,605. DAVENPORT, IOWA, *June* 26, 1861.

Eighteen (18) months after date we promise to pay to the order of Joseph A. Le Claire, sixteen hundred and five dollars, value received, at Exchange, Boston, Mass.

(Signed)

B. P. $105. Int. 4. 4705.

[P. B. 29 L. U. S. rev. stamp.]

(Indorsed:) P. N. P. Dec. 29th, 1862. P. B. N. P. Fees & postage & stamp, $2 28.

Dec. 26–29, 1862.

495 (Indorsed:) J. A. Le Claire. June 16, 1863. Received of the Exchange Bank, Boston, fifteen hundred dollars on the within. $1,500. Pay Seth Pettee, esq., cash'r, or order. Jas. Mitchell, cash'r. Rec'd 152 05, July 7, '63. G. H. Edwards, mess.

496 EXHIBIT 17.

$2,060 00. DAVENPORT, IOWA, *June 26th*, 1861.

Two (2) years after date we promise to pay to the order of Joseph A. Le Claire, two thousand & sixty dollars, value received, at Exchange Bank, Boston, Mass.

(Signed)

June 26–29, 1863.

P. N. P., 29 June, 1863. P. B. N. P. Fees & postage & stamp, $2 78.

[U. S. rev. stamp canc'l'd.]

497 (Indorsed:) J. A. Le Claire. Pay Seth Pettee, esq., cash., or order. Jas. Mitchell, cash'r. Rec'd 2,065 04, July 7, '63. G. H. Edwards, collect. cl'k.

498 No. 4.—*Defendants' exhibits marked Nos.* 19 *and* 20.

EXHIBITS 19 & 20.—Accounts of Geo. L. Davenport and Louis C. Dessaint, from Cook & Sargent's depositors' ledger "E."

EXHIBIT 20.

Geo. L. Davenport in account with Cook & Sargent.

DR.				CR.		
1858.				1858.		
1858	Ledger D.		852 35	Ap'l 1.	L. D. 285	970 35
Apr.	1. To ch. 11		100	" "	By cash	115 50
"	2. " " 12		161 82	" 3.	" balance forward	42 37
"	3. " bal. int.		14 05			$
			$1,128 22			$1,128 22

Apr.	3.	To bal. forward			42	37	
"	7.	" ch.	13		50		
"	8.	" "	15		80		
"	"	" "	14		98	36	
"	24.	" "	16		50		
May	3.	" "	18		200		
"	11.	" "	19		32		
"	12.	" "	20		32	25	
"	14.	" "	21		95	36	
"	15.	" "	22		68	15	
"	17.	" "	23		25		
"	18.	" "	24		30		
"	24.	" "	17		40		
"	"	" "	26		106		
"	25.	" "	28		200		
"	27.	" "	29		64	20	
"	"	" "	25		27	96	
"	28.	" "	26		27	75	
"	29.	" "	"		95		
June	4.	" "	34		50		
"	"	" "	"		10		
499	1858.						
June	5.	To check	36		544	21	
"	8.	" "	33		53	57	
"	"	" "	31		166	95	
"	10.	" "	32		35	80	
"	12.	" "	37		106	49	
"	"	" "	38		72		
"	16.	" "	39		20		
"	24.	" "	40		100		
"	26.	" "	41		53	25	
"	"	" "	42		120		
"	30.	" "	44		250		
"	"	" "	45		131	63	
July	1.	" "	46		307	20	
"	2.	" "	43		150		
"	"	" "	47		30	95	
"	6.	" "	49		61	89	
"	"	" "	50		91	75	
"	"	" "	51		70	42	
"	7.	" "	52		51	10	
"	"	" "	48		49		
"	"	" "	53		15		
"	8.	" "	54		6		
"	10.	" "	58		3		
"	"	" "	57		25		
"	"	" "	59		160		
"	"	" "	55		165		
"	"	" "	56		39	25	
"	12.	" "	62		37		
"	"	" "	61		19		
"	16.	" "	60		25		
"	19.	" "	63		125		
"	23.	" "	64		80	83	
500	1858.						
June	23.	To check	66		58		
"	31.	" "	67		39	25	
Aug.	4.	" "	68		27	55	
"	6.	" "	65		48	04	
"	7.	" "	69		100		
"	10.	" "	70		20		
"	16.	" "	71		63	63	
"	23.	" "	72		71	50	
"	27.	" "	76		48		
"	28.	" "	73		29	17	
"	"	" "	74		6		
"	"	" "	75		20		
"	"	" "	77		11		
"	"	" "	78		50		
Sep.	1.	" "	80		43		
"	"	" "	79		32		
"	2.	" "	"		29	90	
"	4.	" "	82		1,200		
"	8.	" "	84		21	50	
"	"	" "	83		195		
"	21.	" "	86		273	90	
"	"	" "	85		7		
"	22.	" "	89		100		
"	"	" "	87		8	40	
"	23.	" "	90		10		
"	24.	" "	91		30		
"	"	" "	92		11	09	
"	"	" "	93		66	30	
"	25.	" "	94		100		
"	"	" "	95		200		
"	"	" "	96		10	67	
"	"	" "	97		30		
"	27.	" "	98		45		
"	28.	" "	99		92	86	

Apr.	6.	By cash			135	52	
"	7.	" "			300		
"	16.	" "			150		
"	28.	" "			400		
May	4.	" "			100		
"	14.	" "			66		
"	24.	" "			300		
June	2.	" "			500	55	
July	1.	" "			400		
"	"	" Glbra.			1,216	40	
"	3.	" cash			1,509		
"	10.	" "			205		
"	27.	" "			200		
Aug.	10.	" "			115		
Sep.	4.	" "			770		
"	7.	" "			75		
"	22.	" loan			7,600		
"	"	" cash			300		
Oct.	19.	" "			204		
"	21.	" "			201	25	
"	22.	" "			500	—	
1858.							
Oct.	22.	By interest			97	35	

501	1858.					
Oct.	1.	To check	100		50	
"	2.	" "	101		30	
"	4.	" "	3		21	60
"	"	" "	2		20	
"	6.	" "	5		1,574	39
"	"	" "	4		750	83
"	10.	" "	88		100	
"	12.	" "	7		134	40
"	16.	" "	6		295	50
"	21.	" "	8		1,940	
"	23.	" bal. forward			2,668	90
					$15,275	07

					$15,275	07
1858.						
Oct.	23.	By balance			2,668	90
Dec.	18.	" cash			925	
1859.						
Apr.	16.	" balance fo			2,07	415

1858.						
Oct.	23.	To gold, 1¼ %			19	97
"	25.	" 9			200	
"	29.	" 10			53	97
Nov.	2.	" 11			202	25
"	11.	" 13			36	38
"	13.	" 12			102	30
"	15.	" check	15		15	
"	17.	" "	16		401	
"	"	" "	17		50	
"	"	" "	18		392	
"	19.	" "	19		13	70
"	22.	" "	"		29	
"	"	" "	20		300	
"	27.	" "	21		400	
"	30.	" "	21		15	75
"	"	" "	"		13	24
"	"	" "	"		5	85
Dec.	2.	" "	24		200	
"	3.	" "	14		30	
502	1858.					
Dec.	10.	To check	14		35	35
"	"	" "	"		23	04
"	15.	" "	"		95	78
"	20.	" "	"		300	
"	21.	" "			300	
"	"	" "			100	
"	22.	" "			9	
"	27.	" "			56	66
"	28.	" "			50	
"	29.	" "			31	25
"	30.	" "			175	
	1859.					
Jan'y	3.	" "			200	
"	"	" "			100	
"	"	" "			27	
"	5.	" "			20	
"	10.	" "			25	
Feb.	28.	" "			707	50
M'ch	1.	" "			35	
"	7.	" "			189	
"	17.	" "			306	
"	22.	" "			210	
"	31.	" "			28	39
Apr.	1.	" "			8	73
"	"	" "			40	
"	2.	" "			42	85
"	16.	" interest			55	57
					$5,651	31

					$5,651	31
1859.						
April	16.	To balance			2,057	41
"	"	" gold			3	15
"	18.	" check			100	
"	"	" photograph			5	
"	20.	" check			138	
503	1859.					
Apr.	26.	To check			164	
"	"	" "			75	41
May	3.	" "			594	38
"	5.	" "			50	
"	7.	" rec'd			1	50
"	"	" check			306	
"	10.	" "			4	
"	12.	" "			22	
"	"	" "			50	
"	14.	" "			40	67
"	"	" "			132	
"	16.	" "			92	82
"	"	" "			11	75
"	18.	" "			8	
"	"	" "			50	
"	"	" "			155	

" 24. " "		50
" 27. " "		510
June 1. " "		187 50
" 2. " "		100
" 10. " "		78 75
" " " "		10
" 13. " "		50
" " " "		10
" 14. " "		20
" " " "		240
" 17. " "		171
" 20. " "		24
" 22. " "		21 35
" 23. " "		35 75
" 24. " "		25
" 25. " "		235

504 DR. CR.

1859.		
June 27. To check		10
July 1. " "		20 25
" 2. " "		50 50
" 11. " "		25
" 13. " "		424 65
" " " "		347 75
" " " "		100
" 14. " "		150 12
" 27. " "		70
" 30. " "		40 50
Aug. 2. " "		60
" 5. " "		75
" 6. " "		40
" 9. " "		26 75
" 10. " "		50
" 19. " "		48
" 20. " "		12 50
" " " "		16
" 24. " "		14
" 27. " "		32
Sep. 3. " "		9 95
" " " "		73 37
" " " "		306
" 7. " "		20
" 13. " "		406
" 14. " "		43 57
Oct. 11. " "		40
" 18. " "		50
" 20. " "		10
" 22. " "		50
" 25. " "		22
" 26. " "		68 38
505 1859.		
Dec. 24. To interest		35 49
		$8,508 22
Dec. 24. To balance		990 72

1859.		
Ap'l 16. By cash		170
May 4. " loan		5,422 50
June 1. " cash		200
" 18. " "		320
" 22. " "		1,100
July 9. " "		255
" 14. " "		50
Dec. 24. " bal. forward		990 72
		$8,508 22
Dec. 26. By obligation on B. R.		990 72

"EXHIBIT 19."

DR. *L. C. Dessaint in ac. with Cook & Sargent.*

1858. To ledger "D"		4,236 15
Apr. 5. " protest		1 75
" 9. " check		86
May 8. " "		158 50
" 15. " "		70
" " " "		180
" " " "		00 00
" 22. " "		55 75
27. " bal		2,806 50
		$7,594 65
June 2. To check		369 19
" 3. " "		440
" 5. " "		500
" 16. " "		100
" 23. " "		300
" 29. " "		190 40
Jul. 7. " "		30
Aug. " " "		50
" 9. " "		85
" " " "		12 15
" 16. " balance		2,686 02
506 1858.		$4,762 76

1858. By ledger D		6,990 88
Apr. 22. " Smiley & M. K		81 85
May 14. "		243 26
" 24. "		233 50
" 27. " int		45 16
		$7,594 65
May 27. By bal. for'd		2,806 50
Jun. 3. " Gould & S		440
" 14. "		247 55
" 22. " cash		48 31
" " " Bartlett		443 50
July 8. " Dalzell		500
" 26. " Eichelberger		21 75
Aug. 3, " Davis		142
" 9. " "		80 93
" 16. " int		32 52
(Over.)		
1858.		$4,762 76

1858.			
Aug. 18.	To check		200
" 21.	" "		50
" 28.	" "		154 10
Sep. 2.	" "		100
" 22.	" "		100
" 30.	" "		1,000
Oct. 2.	" "		770
" 4.	" "		201 66
" 6.	" "		100
" 7.	" "		150
" 12.	" "		60 25
" 15.	" "		417 95
" 19.	" bal. for'd		449
			$3,752 96
Oct. 19.	To check		115 50
" 30.	" "		83
Nov. 15.	" "		35
" 16.	" "		20
" 22.	" "		53
" 23.	" "		1,102 21
" "	" "		130
" 24.	" "		145 46
" "	" "		23 22
" 27.	" "		300
" 30.	" "		100
" "	" "		44
" "	" "		50
Dec. 2.	" "		16 22
507 1858.			
Dec. 9.	To check		25
" 14.	" "		350
" 18.	" "		925
" 24.	" "		320 38
			$3,838 09
1859.			
Jan. 4.	To check		100
" "	" "		100
" 14.	" "		91 10
" 18.	" "		24
" "	" "		24 50
" 20.	" "		100
" 28.	" "		433
" "	" "		30
" 31.	" "		50
Feb. 5.	" "		50
" 9.	" "		25
" 14.	" "		355 75
" 21.	" "		61
" 24.	" "		38 75
" 25.	" balance		2,922 10
			$4,405 20
Feb. 25.	To check		50
M'ch 5.	" "		50 95
" 7.	" "		35
" 8.	" "		1,000
" 12.	" "		50
" 16.	" "		191 50
" 29.	" "		131
Apr. 9.	" "		1,334 22
" 15.	" bal.		1,078 15
			$3,830 82
508 1859.			
Apr. 15.	To check		38
" 21.	" "		200
May 11.	" "		50
" 16.	" "		100
" 23.	" "		35
" 24.	" "		248 15
" "	" "		293 43
Jun. 11.	" "		50
July 2.	" "		50
" 13.	" "		50
" 16.	" "		122 65
" 20.	" balance		1,916 28
			$3,153 51

1858.			
Aug. 16.	By balance		2,686 02
" 19.	" Davis		195 83
" 26.	" cash		200
Oct. 2.	" "		50
" 15.	" Dalzell		600
" 19.	" int.		21 11
			$3,752 96
Oct. 19.	Balance		449
" "	By cash		1,000
Nov. 11.	B'k in vault		1,200
" 22.	" " "		183
" "	Cash		800
Dec. 22.	"		189 90
" 24.	Interest		16 19
			$3,838 09
1858.			
Dec. 24.	By balance		320 38
" "	" Davis		27 10
" 28.	" cash		1,900 00
1859.			
Jan. 5.	" "		185 78
" 17.	" Smith & R.		83 64
" 19.	" cash		865
Feb. 24.	" "		1,000
" 25.	" int.		23 30
			$4,405 20
1859.			
Feb. 25.	By balance		2,922 10
M'ch 1.	" cash		789 50
Ap'l 2.	" "		62 50
" 11.	" "		66 66
" 15.	" int.		20 06
			$3,830 82
1859.			
Apr. 15.	By balance		1,078 15
" 20.	" cash		1,200
May 6.	" Gould & S.		372 60
" 21.	" cash		120
" 24.	" "		300
June 2.	" "		50
July 20.	" interest		32 76
			$3,153 51

July 21.	To check		1,640		1859.		
Aug. 5.	" "		40	July 20.	By balance		1,916 28
" 8.	" "		100	Aug. 4.	" cash		7,690
" 9.	" "		113 20	Oct. 4.	" Sanford & W		40
" 10.	" "		32 50	Nov. 1.	" int		33 15
" 16.	" "		550				
" 18.	" "		25				
" 22.	" "		50 75				
" 23.	" "		682 50				
Sept. 6.	" "		5,000 00				
" 17.	" "		21 37				
" "	" "		50				
Oct. 10.	" "		47				
" 11.	By cash		20				
" 21.	" "		100				
Nov. 1.	" bal		1,207 11				
			$9,679 43				$9,679 43

509 1859.				1859.			
Dec. 17.	To check		47 82	Nov. 1.	By balance ac		1,207 11
" "	" "		1,125	Dec. 30.	" interest		9 83
" "	" "		11 34				
" 30.	" balance		32 78				
			$1,216 94				$1,216 94
				1859.			
				Dec 30.	By balance		$32 78

510 No. 5.—*Defendants' exhibit marked "V."*

EXHIBIT V.

Know all men by these presents that we, Cook & Sargent, late a banking firm in the city of Davenport, Iowa, for and in consideration of the sum of fifteen thousand ($15,000) dollars to us in hand paid at and before the execution and delivery of these presents by George L. Davenport, of said city, the receipt whereof is hereby acknowledged and confessed, have granted, bargained, sold, and assigned, and by these presents do grant, bargain, sell, assign, & deliver unto the said George L. Davenport, his heirs and assigns, all our right, title, interest, and claim in and to the assets, good-will, and possessions, of the firm of Cook, Sargent & Parker, of Florence, in the county of Douglas, and Territory of Nebraska, the said Cook & Sargent hereby meaning and intending, for the consideration aforesaid, to sell, transfer, and deliver possession unto the said George L. Davenport all the interests of said Cook & Sargent in the assets of the said firm of Cook, Sargent & Parker of Florence aforesaid, including real, personal, and mixed estate, all choses in action, and property of every name and nature belonging to said Cook & Sargent in said firm, excepting thereout, however, such interest and rights as the said Cook & Sargent may have in the franchise or charter of the Bank of Florence, to have and to hold the same unto the said George L. Davenport, his heirs, executors, administrators, and assigns, forever.

And the said Cook & Sargent do hereby covenant and agree to and with the said George L. Davenport, that the interest of the said Cook and Sargent in the said firm of Cook, Sargent & Parker is clear and unincumbered; that the said Cook & Sargent have full right and lawful authority to sell the said interest; and that the real interest of the said firm of Cook & Sargent in the said firm of Cook, Sargent & Parker is worth the said sum of fifteen thousand dollars.

511 In testimony whereof the said Cook & Sargent have hereunto set their hand this 12th day of December, A. D. 1860.

(Signed) COOK & SARGENT.

And Ebenezer Cook, George B. Sargent, John P. Cook, and John C. Davie, individual members of said firm of Cook & Sargent, hereunto set their hands and seals as evidence of their consent and ratification of the foregoing sale.

(Signed) EBENEZER COOK. [SEAL.]
GEO. B. SARGENT. [SEAL.]
JNO. P. COOK. [SEAL.]
JNO. C. DAVIE. [SEAL.]

(Endorsed:) "V." Cook & Sargent, contract & sale to Geo. L. Davenport.

Filed for record January 3d, A. D. 1861, at 3 o'c. p. m., & recorded in book N of deeds, page 122.

(Signed) THOS. D. CONNOR,
Rec. of Deeds.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this 12th day of December, A. D. 1860, personally appeared before the undersigned, a notary public in and for said county, Ebenezer Cook, George B. Sargent, John P. Cook, and John C. Davie, personally known to me to be the identical persons represented in the foregoing sale and assignment, and acknowledged that they had executed the foregoing contract in the name of Cook & Sargent, and in each of their own names, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and notarial seal the day and year above written.

[NOTARIAL SEAL.] (Signed) JNO. L. COFFIN,
Notary Public.

512 (Endorsed:) "V." Cook & Sargent to Geo. L. Davenport. Contract & sale.

Filed for record January 3d, A. D. 1861, at 3 o'c. p. m., and recorded in book N of deeds, at page 122.

(Signed) THOS. D. CONNOR, *Reg. of deeds.*

No. 6.—*Defendants' exhibits marked H to P.*

DEFENDANTS' EXHIBIT "H."

$5,000. DAVENPORT, *Oct. 20th*, 1859.

Three months after date I promise to pay to the order of Antoine Le Claire & George L. Davenport, five thousand dollars $\frac{00}{100}$, payable at the Bank of North America, New York. Value received.

No. ——. Due 23 Jan'ry.

(Signed) EBENEZER COOK.

(Endorsed:) Sargent & Dixwell.

DEFENDANTS' EXHIBIT "I."

$5,000. DAVENPORT, *Oct.* 20, 1859.

Four months after date pay to the order of Antoine Le Claire & George L. Davenport, five thousand dollars $\frac{00}{100}$ value received, which charge to account of—

(Signed) EBENEZER COOK.

To SARGENT & DIXWELL, *Boston.*

(Indorsed:) Accepted. Cancelled.

513 DEFENDANTS' EXHIBIT "J."

$4,000. DAVENPORT, IOWA, *January 22d*, 1861.

Four months after date pay to the order of myself at the office of Clark, Dodge & Co., in New York, four thousand dollars, value received, and charge the same to account of—

(Signed)

To GEO. L. DAVENPORT, Esq., *Davenport, Iowa.*

(Indorsed:) A. Le Claire.
(Indorsed:) Settled August 26, 1861.

DEFENDANTS' EXHIBIT "K."

$4,000. DAVENPORT, IOWA, *Sept. 22d*, 1860.

Four months after date pay to the order of myself at the office of Clark, Dodge & Co., New York, four thousand dollars, value received, and charge the same to account of—

(Signed) A. LE CLAIRE.

To GEO. L. DAVENPORT, Esq., *Davenport, Iowa.*

(Endorsed:) A. Le Claire.
(Indorsed:) Accepted Sept. 22d, 1860. Geo. L. Davenport.

DEFENDANTS' EXHIBIT "L."

$2,000. DAVENPORT, IOWA, *Oct. 7th*, 1863.

Four months after date I promise to pay to the order of myself, two thousand dollars at the office of Clark, Dodge & Co. New York. Value received.

(Signed)

(Endorsed:) Geo. L. Davenport.

[U. S. stamp 2 cts.] [U. S. stamp 2 cents.] [U. S. stamp 40 cts.]

514 DEFENDANTS' EXHIBIT "M."

$25,000 00. DAVENPORT, IOWA, *May 7th*, 1863.

Four months after date I promise to pay to the order of Messrs. Clark, Dodge & Co., at their office in New York, twenty-five hundred dollars. Value received.

(Signed)

Due Sept. 10, '63.

[U. S. stamp $1 50.]

DEFENDANTS' EXHIBIT "N."

$2,500 00. DAVENPORT, *Jan. 4th*, 1863.

Four months after date I promise to pay to the order of Clark, Dodge & Co., twenty-five hundred dollars $\frac{100}{100}$, payable at the office of Clark, Dodge & Co., New York. Value received.

(Signed)

[U. S. stamp $1 00.]

DEFENDANTS' EXHIBIT "O."

$3,000. DAVENPORT, IOWA, *May 1st*, 1862.

Four months after date I promise to pay to the order of myself, three thousand dollars $\frac{00}{100}$, payable at the office of Clark, Dodge & Co., New York. Value received.

(Signed)

(Endorsed:) Geo. L. Davenport.

(Indorsed:) Paid.

515 DEFENDANTS' EXHIBIT P.

$3,000. DAVENPORT, IOWA, *May 1st*, 1862.

Four months after date I promise to pay to the order of myself, three thousand dollars $\frac{00}{100}$, payable at the office of Clark, Dodge & Co., New York. Value received.

(Signed)

(Endorsed:) Pay to order of Clark, Dodge & Co. Geo. L. Davenport.

516 No. 7.—*Defendants' exhibit marked G.*

DEFENDANTS' EXHIBIT "G."

$6,550. DAVENPORT, IOWA, *May 1st*, 1857.

One year after date I promise to pay to Nicholas H. & Anthony T. Strippel, or order, six thousand five hundred and fifty dollars, for value received, with interest at ten per cent. per annum. This note is secured by deed of trust of same date.

(Signed) JAMES MAY.

(Indorsed:) 1858, May 1.—Interest paid on this note to this date. 1859, July 20.—Received under sale by virtue of deed of trust, by which this note is secured, four thousand nine hundred and eleven $\frac{50}{100}$ dollars, ($4,911 $\frac{50}{100}$.)

(Signed) CHAS. POWERS, *Trustee.*

Without recourse.

N. H. & A. T. STRIPPEL.

517 No. 8.—*Defendants' exhibit marked F.*

DEFENDANTS' EXHIBIT "F."

I will attend to my uncle's business for the following consideration, viz:

1st. He to cancel all my indebtedness to him.

2d. He to pay what I owe, ($4,500 and some interest, $300 00.)

3d. He to deed to me the "May farm" and the Andrews & Shelly property, and give me in cash (to liquidate some small indebtedness) about three hundred dollars.

For the above I will bind myself to do as he may desire that I should in regard to his business.

(Signed) J. A. LE CLAIRE.

To C. E. PUTNAM, Esq.

DAVENPORT, IOWA, *Nov.* 19, 1860.

On condition that my nephew Joseph A. Le Claire attends faithfully to all my business during my lifetime, I consent to the foregoing arrangement proposed by him.

(Signed) A. LE CLAIRE.

NOVEMBER 21, 1860.

I consent to the above and will attend to my uncle's business during his lifetime as desired.

(Signed) J. A. LE CLAIRE.

NOV. 21ST, 1860.

518 No. 9.—*Defendants' exhibit marked D.*

DEFENDANTS' EXHIBIT "D."

This article of agreement, made this 15th day of July, 1861, by and between Louis C. Dessaint, of Davenport, Scott County, Iowa, of the first part, and Antoine Le Claire, of the same place, of the second part, witnesseth that whereas on the second day of July, 1861, the said Antoine Le Claire and Marguerite, his wife, did convey to said Louis C. Dessaint, by a deed dated that day, absolute in form, certain lands situated in the counties of Iowa & Johnson, State of Iowa, described in said deed, to which reference is hereby; made and whereas said conveyance was, in fact, in trust for the purposes hereinafter set forth: Now, therefore, in consideration of the premises and of one dollar to the said first party in hand paid, the said Louis C. Dessaint, party of the first part, hereby covenants & agrees to and with said Ant. Le Claire, his heirs, representatives, and assigns, that whereas the said Ant. Le Claire is indebted to the State Bank of Iowa, Merchants' Branch, at Davenport, in the sum of $4,000 00, and conveyed said lands by said deed of trust to secure the said indebtedness, he, the said Louis C. Dessaint, shall proceed to sell said lands so conveyed as aforesaid, or so much thereof as may be necessary to pay said debt, at public or private sale, and upon such terms as may seem best to said Louis C. Dessaint, and with the proceeds pay said debt and the expenses of said trust, and after such payment reconvey the residue of said lands to said party of the second part, by good and sufficient deed, with full warranty against all acts of the said party of the first part.

Witness our hands and seals the day and year aforesaid.

(Signed)

(Signed)

519 STATE OF IOWA, *County of Scott, ss*:

On this 18th day of July, 1861, before me, a notary public in and for said county, personally appeared Louis C. Dessaint, to me personally known to be the identical person whose name is subscribed to the foregoing instrument as grantor, & acknowledged said instrument to be his free and voluntary act and deed.

Witness my hand and notarial seal the day and year aforesaid.

[NOTARIAL SEAL.] (Signed) JOHN N. ROGERS,
Notary Public.

(Endorsed:) "D." Louis C. Dessaint to Antoine Le Claire. Declaration of trust.

520 No. 10.—*Defendants' exhibit marked C.*

DEFENDANTS' EXHIBIT "C."

This deed of warranty, made this 2nd day of July, A. D. 1861, between Antoine Le Claire and Marguerite Le Claire, his wife, of the county of Scott and State of Iowa, of the first part, and Louis C. Dessaint, of the county of Scott and State of Iowa party of the second part, witnesseth that said parties of the first part, for the consideration of the sum of four thousand dollars, the receipt whereof is hereby acknowledged, do, by these presents, grant, bargain, sell, and convey unto said party of the second part, his heirs and assigns, forever, the tracts of real estate in the county of Iowa and State of Iowa, described as follows, to wit: The south fr. one-half of the northwest quarter of section No. six (6) in township No. seventy-nine (79) north, of range No. ten (10) west, of the 5th P. M.; also the north fr. half of the northwest quarter of section No. thirty, (30,) the south half of the southeast quarter, and the northeast quarter of the southeast quarter of section three, (3,) the west half of the southwest quarter of section five, (5,) the northeast quarter of the northwest fr. quarter, and the northwest quarter of the northeast fr. quarter, and the southwest quarter of the northeast quarter, and the southeast quarter of the northwest quarter, and the west half of the northwest fr. quarter of section No. six, (6,) and the northeast quarter of section No. ten, (10,) and the southwest fr. quarter of southwest quarter, and the west half of the southeast quarter, and the east half of the southwest quarter of section No. nineteen, (19,) the south half of the northwest quarter of section No. two, (2,) all in township No. seventy-nine (79) north, of range No. (11) eleven west, of 5th pr. mer.; also the northeast quarter of the northeast quarter of section No. fifteen (15) in township No. eighty-one (81) north, of range No. (10) ten west, of the 5th pr. mer., also the east half of the northeast fr. quarter of section No. four;
521 (4,) and the southwest fr. quarter of section No. thirty-one, (31,) in township No. seventy-nine (79) north, of range No. twelve (12) west, of the 5th pr. mer.; also the south half of the southeast quarter of section No. thirty-six, (36,) and the southwest quarter of the northwest fr. quarter, and the north half of the southwest fr. quarter of section No. six (6,) in township No. eighty (80) north, of range No. twelve (12) west, of the 5th pr. mer.; also the southeast quarter of southeast quarter of section No. one (1) in township No. eighty (80) north, of range No. (10) ten west, of the 5th pr. mer.; also the southeast quarter of the southwest quarter and the southwest quarter of the southeast quarter of section No. thirty-one, (31,) and the north half of the northeast quarter, and the north half of the northwest quarter of section thirty-four (34) in township No. eighty (80) north, of range No. eleven (11) west, of the 5th pr. mer.

Also the following described tracts of real estate in the county of Johnson and State of Iowa, described as follows, to wit: The northeast quarter of the northeast quarter section No. thirty-two, (32,) and the north half of the southwest quarter of section No. twenty-seven, (27,) and the southwest quarter of the southwest fr. quarter of section No. nineteen, (19,) and the southeast quarter of the northwest quarter of section No. ten, (10,) and the west half of the southwest fr. quarter, & the west half of the northwest fr. quarter, and the southeast quarter of the northwest quarter of section No. thirty, (30,) and the northwest quarter of the northwest quarter of section No. thirty-three. (33,) all in township No. seventy-nine (79) north, of range No. eight (8) west, of 5th pr. mer.;

also the northwest quarter of the southwest fr. quarter of section No. eighteen (18) in township No. seventy-nine (79) north, of range No. seven (7) west, of 5th pr. mer.; also the southeast quarter of the northwest quarter of section No. fourteen (14) in township No. eighty (80) north, of range No. six (6) west, of the 5th pr. mer.; also the southeast
522 quarter of the northwest quarter of section No. twenty-five (25) in township No. eighty-one (81) north, of range No. five (5) west, of the 5th pr. mer.; also the southwest quarter of the northwest quarter of section No. twenty (20) in township No. eighty-one (81) north, of range No. eight (8) west, of the 5th [5th] pr. mer.

Also the following described premises in Iowa City, Johnson County, Iowa, to wit: Fifty feet N. & S. fronting on Clinton street by one hundred and fifty feet (150) E. & W. out of the middle of lots three & four (3 & 4) in block seventy-six, (76,) and fifty (50) feet front on Fairchild street by seventy-five (75) feet on Linn street, being in the southeast corner of lot eight (8) in block seventy-one, (71,) and ninety feet front on Clinton street by eighty (80) feet on College street of lot one (1) in block eighty-three, (83;) also lots one, (1,) two, (2,) seven, (7,) and eight, (8,) in block two (2) in Lyon's addition to Iowa City.

Also the following in that part of Iowa City known as "The county seat," to wit: lot four (4) in block eleven, (11;) lot six (6) in block twelve, (12;) lots five, (5,) six, (6,) and seven (7) in block fifteen, (15;) lots one, (1,) two, (2,) five, (5,) seven, (7,) & eight (8) in block sixteen, (16;) and fractional block twenty-three, (23.) Also a part of the west half of the southeast quarter of the southeast quarter of section three, (3,) township seventy-nine (79) north, of range six (6) west, adjoining Iowa City, in Johnson County, and described as follows: Commencing two hundred and seventy-four (274) feet north from the southeast corner of the above-described tract of land; thence north on said line eighty (80) feet; thence west three hundred & forty-six (346) feet to the east side of the United States military road; thence south along said road eighty feet; thence east three hundred and eighty-six (386) feet to the place of the beginning.

523 To have and to hold the premises above described, with all the appurtenances thereunto belonging, unto him, the said second party, & to his heirs and assigns, forever. The said Antoine Le Claire hereby covenanting for himself, his heirs, executors, and administrators, that the above-described premises are free from any incumbrance; that he has full right, power, and authority to sell the same; and that he will warrant & defend the title unto the said party of the second part against the claims of all persons whomsoever lawfully claiming the same; and the said Marguerite Le Claire, wife of the said Antoine Le Claire, hereby releases and relinquishes all her right of dower in and to the foregoing described premises.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first herein written.

(Signed) A. LE CLAIRE. [SEAL.]
(Signed) M. LE CLAIRE. [SEAL.]

STATE OF IOWA, *County of Scott, ss:*

Be it remembered that on this 12th day of July, A. D. 1861, before the undersigned, a notary public in and for said county, personally appeared Antoine Le Claire & Marguerite Le Claire, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed; and that they executed the same for the purposes therein mentioned. And the said Marguerite Le Claire, wife of

the said Antoine Le Claire, acknowledged that she relinquished all her right of dowèr in the premises described.

524 Witness my hand and notarial seal the day and year last above written.

[NOTARIAL SEAL.] (Signed) J. A. LE CLAIRE.
Notary Public, Scott County, Iowa.

(Endorsed:) "C." Antoine Le Claire to Louis C. Dessaint. Deed.

Filed for record July 20th, 1861, at 8 o'clock a. m., and recorded in book 20 of deeds, pages 312, 313, & 314.
(Signed) J. G. SPERRY,
Recorder Johnson County, Iowa.

Paid, 1 80.

STATE OF IOWA, *Iowa County*:

Filed for record this 1st day of November, A. D. 1861, at 3 o'clock p m., and duly recorded in book of deeds, pages 217, 218, & 219.
(Signed) J. C. BEEM, *Co. Recorder*,
By H. C. PAIGE, *Deputy.*

525 No. 11.—*Defendants' Exhibit "B."*

EXHIBIT B.

STATE OF IOWA, *Scott County, ss*:

George R. West, being duly sworn, says that he is one of the proprietors of the Iowa State Democrat, a newspaper published in said county, and that a notice, a printed copy of which is hereunto annexed, has been published in said paper (3) three weeks, commencing on the 28th of June last.
(Signed) GEO. R. WEST.

Subscribed and sworn to before me this 20th day of July, 1859.
(Signed) GEO. M. VAN HOSEN,
Notary Public, Scott Co., Iowa.

Trustee's sale.

Whereas, on the 1st day of May, A. D. 1857, James May, of Davenport, Scott County, Iowa, executed unto Charles Powers, as trustee, a certain deed of trust conveying to said trustee the land in Scott County, Iowa, described as follows, to wit: The southeast quarter of section number fourteen (14) in township number seventy-eight (78) north, of range three (3) east, of 5th principal meridian, excepting fifteen 1-100 acres in west half of said section, and on the south side of Duck Creek, which said conveyance was made by the said James May for the purpose of securing the payment of one certain promissory note, and the interest thereon, signed by said James May, and dated the 1st day of May, A. D. 1857, and payable as follows, for the sum of six thousand five hundred and fifty dollars, payable on the 1st day of May, 1858, with interest at ten per cent. per annum; and now, said promissory note having become due and payable, and the said James May having failed

526 to pay the same, I, Charles Powers, trustee as aforesaid, do hereby give this public notice, that by virtue of the power which is in me vested by said deed of trust, I will, on Wednesday, the 20th day of July,

A. D. 1859, at the hour of 2 o'clock in the afternoon of said day, at the court-house door in the city of Davenport, expose and offer for sale, at public auction, to the highest bidder for cash, the parcel of land above described, or so much thereof as shall be sufficient to satisfy and pay the amount of said note, with interest thereon to the day of sale, together with all the costs and expenses attending said sale, costs of this notice, and trustee's fees.

Dated the 25th day of June, A. D. 1859.

June 28.

(Signed) CHARLES POWERS, *Trustee.*

EXHIBIT B.

This indenture, made and executed this 20th day of July, A. D. 1859, by and between Charles Powers, of Davenport, of the county of Scott and State of Iowa, of the first part, and Louis C. Dessaint, of the same place, of the second part, witnesseth that whereas James May, of Davenport aforesaid, by a certain deed of trust bearing date the first day of May, A. D. 1857, for the consideration of six thousand five hundred and fifty dollars, did bargain, sell, and convey unto the said Charles Powers, as trustee, and to his heirs and assigns, forever, all of the following described parcel of land situated in the county of Scott and State of Iowa, to wit: The southeast quarter of section number (14) fourteen in township seventy-eight (78) north, of range three east, of fifth principal meridian, excepting fifteen 1-100 in west half of said section, and on the south side of Duck Creek, which deed was made subject to a proviso therein contained, that the same was made for the purpose of securing the payment of one certain promissory note executed by the said James May for the sum of six thousand five hundred and fifty dollars, bearing same date with said deed of trust, and payable on the first day of May, 1858, with interest at ten per cent. per annum, with a special power in said deed of trust authorizing said Charles Powers, trustee as aforesaid, in case said James May should neglect to pay the promissory note aforesaid, or any part thereof, or the interest, when due, to advertise said property in any newspaper printed in said county of Scott, at least twenty days, and sell the same at public auction, at the court-house door, in the city of Davenport, to the highest bidder for cash, with power to execute to the purchaser a deed in fee-simple, for the premises aforesaid, which deed will be absolute, and prevent said James May, party of the first, and his heirs, from setting up any claim thereto, either in law or equity; and whereas said deed of trust was duly recorded upon the records of said Scott County, on the fourth day
527 of May, A. D. 1857, as appears endorsed thereon, and in book L of mortgages, page 106, to which deed, and the record and the power therein, reference is hereby made, and in which all the matters recited herein more fully and at large appear; and whereas, default having been made in the payment of the money so secured by said deed of trust, the premises hereinbefore particularly described and set out, were on Wednesday, the 20th day of July, A. D. 1859, at the hour of two o'clock in the afternoon, and at the court-house door, in said city of Davenport, at public auction, for cash, sold to Louis C. Dessaint, the said party of the second part, for the sum of five thousand dollars, he being the highest bidder therefor, public notice having been previously given of said sale by an advertisement inserted in a newspaper printed and published in said county of Scott, and entitled "Iowa State Democrat," no

one offering to bid on any part of said tract, less than the whole, I offered the whole tract, which was sold as above: Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the sum aforesaid, and to him in hand paid, the receipt whereof is hereby acknowledged by the said party of the first part, has granted, bargained, and sold, and, by these presents, does grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, all and singular the parcel of land which is hereinbefore set out and described, with all the rights and privileges thereunto belonging and appertaining, as the same are described and conveyed in said deed of trust, and all the right, title, and interest of James May, whether in law or equity, as well of the said first party in and to the premises before mentioned and described, and every part thereof, as fully and to all intents and purposes as the said party of the first part has power and authority to give, grant, and sell the same, by virtue of said deed of trust, to have and to hold the said premises, and every part thereof, with all the appurtenances, to him, the said second party, and to his heirs and assigns, forever.

In witness whereof the [the] said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signed) CHARLES POWERS, [SEAL.] *Trustee.*

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on this 20th day of July, A. D. 1859, before the undersigned, a notary public in and for said county, personally appeared Charles Powers, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

(Signed) R. D. CONGDON,
Notary Public.

528 (Indorsed:) Def'ts' Exhibit "B." Trustee's deed, Charles Powers to Louis C. Dessaint.

STATE OF IOWA, *Scott County:*

Filed for record this 21st day of July, A. D. 1859, at 1 o'clock 5 minutes p. m., and recorded in book "V" of deeds, page 546.

JAMES McCOSH, *Recorder,*
By CHAS. H. ELDRIDE, *Dep'ty.*

529 No. 12.—*Defendants' exhibit marked "A."*

DEFENDANTS' EXHIBIT "A."

No. —— DAVENPORT, *July 21st*, 1859.

Merchants' Branch State Bank of Iowa:

Pay in currency to Jno. P. Cook, or bearer, seven thousand four hundred & forty $\frac{00}{100}$ dollars.

$7,440. L. C. DESSAINT.

530 **No. 13.—*Defendants' exhibit "U."***

EXHIBIT "U."

DR. *Cook & Sargent in account with L. C. Dessaint.* CR.

1859.				1859.		
Feb. 25.	Bal. ac. old b'k	2,922 10				50
M'ch 1.	To cash	759 50				50
Apr. 2.	" "	62 50				35
" 11.	" "	66 66				1,000
" 15.	" int	20 06				50
						101 50
						131
						1,334 22
		3,830 82		Apr'l 15.	Balance	1,078 15
						3,830 82
Ap'l 15.	balance ac. for'd	1,078 15			C'k	38
" 20.	cash	1,200				200
May 6.	Gould & Steere	372 60				50
" 21.	cash	120				100
" 24.	"	300				35
June 2.	"	50				248 15
July 20.	int	32 76				293 43
						50
						50
						50
						122 65
		3,153 51		July 20.	Bal.	1,916 28
						3,153 51
July 30.	bal				C. & B.	1,640
Jul. 30.	bal	1,916 28				40
Aug. 4.	cash	7,690			P. & L.	100
					Woodward	113 20
					S. P	32 50
					Smith	550
					Stokes	95
					S. P. & C.	50 75
					Wadsworth	682 50
					State Bank	5,000
					Self	
		9,606 28				8,233 95
1859.				1859.		
	amount for	9,606 28			Amount f'r'd	8,233 95
Oct. 4.	Sanford W	40				21 37
	int	33 15				50
						47
						20
						100
		9,679 43		Nov. 1.	Balance	1,207 11
						9,679 43
Nov. 1.	balance ac.	1,207 11				47 82
Dec. 30.	int	9 83				1,125
						11 34
		1,216 94		Dec. 30.		32 78
						1,216 94
Dec. 30.	balance	32 78				

531 (Indorsed:) Exhibit "U." No. 25, eq. James May vs. Antoine Le Claire's ex'c'rs et al.

Filed Oct. 21, 1864.
(S'g'd)

W. G. WOODWARD,
Clerk C. C. U. S.

532 **No. 14.—*Sheriff's deed to Drawson Wilson.***

Filed for record Oct. 11th, A. D. 1861, at 3 o'clock p. m.
JAMES McCOSH, *Recorder*,
By F. H. IMPEY, *Dep. Rec.*

This indenture, made this first day of October, in the year eighteen hundred and sixty-one, by and between James Thorington, sheriff of Scott County, State of Iowa, of the first part, and Drawson Wulsin, of the county of Hamilton and State of Ohio, of the second part, witnesseth that whereas, on the 2d day of July, A. D. 1860, there issued out of the office of the clerk of the district court of said Scott County a certain writ of execution, duly tested by said clerk, and under the seal of said court, and directed to sheriff of said county as aforesaid, commanding him that of the goods and chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of said defendant, or so much as may be found necessary, he, the said sheriff, as aforesaid, should cause, in conformity with the statutes in such case made and provided, to be made the sum of nineteen hundred and twelve ($1,912) dollars and fifty (50) cents, amount due, including debt, interest, and costs, with interest thereon, at the rate of ten per cent. per annum, from the 19th day of November, A. D. 1859, on a certain judgement recovered in said district court of said county on the 19th day of November, A. D. 1859, in a suit wherein Drawson Wulsin is plaintiff, and James May is defendant, wherein it was ordered and adjudged that said plaintiff should recover from the said defendant the aforesaid sum as damages and costs, which were sustained by reason of the non-performance of certain performances and undertakings made by the said defendant, and adjudged to the said plaintiff; and whereas it was ordered that an execution issue against said defendant, and after such sale, the statute in such case made and provided provides that defendant in such case will be barred and foreclosed from redeeming the same from and after
533 the expiration of twelve months from the day of the date of said sale, which said time expired on the 29th day of September, A. D. 1861, and by virtue of said writ of execution the real estate hereinafter mentioned was levied upon and taken as the property of said defendant on the 30th day of August, A. D. 1860; and whereas four weeks' notice of the time and place of said sale having been previously given in accordance with the statute in such case made and provided, by posting up a printed notice thereof at the court-house where the last district court was held, to wit, in the city of Davenport, and one at the post office in said city of Davenport, and one in Davenport Township, a public place in the township, where said real estate is situated, being three public places in said Scott County, Iowa, and by publishing a notice thereof for four consecutive weeks immediately preceeding the day of sale in the Davenport Daily Gazette, a newspaper published in the said county of Scott, State aforesaid—a copy of said notice is herewith accompanying and attached to this conveyance as a matter of reference—the said James Thorington, sheriff as aforesaid, did, on the 29th day of September, A. D. 1860, at the hour of 2 o'clock in the afternoon of said day, at the door of the court-house in the city of Davenport, in the county of Scott, and State aforesaid, in conformity with the statute and in obidience to said writ of execution and the notice given as aforesaid, expose for sale at public auction the real estate hereinafter described, and did then and there sell the same at public auction to Drawson Wulsin for the sum of seven hundred and fifty-five (755) dollars, that being

the highest and best bid therefor, and he, the said Drawson Wilson, being the highest and best bidder therefor: Now, therefore, this indenture witnesseth that, in consideration of the foregoing premises and of the sum aforesaid, to wit, seven hundred and fifty-five (755) dol-
534 lars, bid by the said Drawson Wulsin, and the further sum of one dollar to me in hand paid for this conveyance, the receipt whereof is hereby acknowledged, the said James Thorington, sheriff as aforesaid, party of the first part, hath bargained and sold, and, by these presents, doth grant, bargain, sell, and convey, unto the said Drawson Wilson, party of the second part, his heirs and assigns, forever, the following described tract of real estate, lying and being situated in the county of Scott and State of Iowa, (being the same real estate hereinbefore referred to,) to wit: The southeast quarter of section number fourteen (14) in township No. seventy-eight (78) north, of range No. three (3) east, of the 5th P.M. Also part of lot No. four (4) in block No. twenty (20) in the city of Davenport, in said Scott County, commencing at the southeast corner of said lot No. four, (4;) thence west eighty (80) feet; thence north forty (40) feet; thence east eighty (80) feet; thence south forty (40) feet, to the place of beginning. Also the following part of said lot No four, (4,) commencing at the northeast corner of said lot No. four, (4;) thence south fifty (50) feet; thence west eighty (80) feet; thence north fifty (50) feet; thence east eighty (80) feet, to the place of beginning. Also lots Nos. two, (2,) five, (5,) and six (6,) in block number thirty-eight, (38,) in the city of Davenport, in said county of Scott, and State of Iowa: To have and hold the said real estate, and the appurtenances thereto belonging, unto him, the said second party, and to his heirs and assigns, forever, as fully and absolutely as the said party of the first part, by virtue of the foregoing premises, might and could sell and convey the same.

In testimony whereof the said party of the first part hath here-
535 unto set his hand and seal this the first day of October, A. D. 1861.

(Signed) JAMES THORINGTON, [SEAL.]
Sheriff of Scott County, Iowa.

STATE OF IOWA, *Scott County, ss:*

Be it rememberd that on this 7th day of October, A.D. 1861, before the undersigned, Hans. H. Andresen, a notary public in and for said county, came James Thorington, to me personally known to be the identical person whose name is subscribed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed, and that as sheriff of Scott County aforesaid he executed the same for the purposes therein mentioned.

Witness my hand and official seal the day and year above written.

[NOTARY'S SEAL.] (Signed) HANS. H. ANDRESEN,
Notary Public in and for Scott Co., Iowa.

STATE OF IOWA, *Scott County:*

RECORDER'S OFFICE.

I hereby certify that the above and foregoing is a true and faithful copy of a deed from James Thorington, sheriff, to Drawson Wulsin, as the same appears of record in [in] my office in book "Z" of deeds, on page 545.

Witness my hand this 2d day of May, A.D. 1863.

(Signed) A. F. MAST,
Recorder Scott County, Iowa.

[5-cent rev. stamp: A. F. M., May 2, '63.]

536 STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, judge of the seventh judicial district of the State of Iowa, and sole presiding judge of the district court for Scott County, hereby certify that the foregoing attestation of A. F. Mast, recorder of said county, is in due form and by the proper officer.

Dated May 5th, 1863.

(Signed) JNO. F. DILLON, *Judge.*

[U. S. rev. st. 5 cts.: J. F. D., May 5, '63.]

STATE OF IOWA, *Scott County ss:*

I, Ira M. Gifford, clerk of the district court of said county, do hereby certify that John F. Dillon, whose name is subscribed to the foregoing certificate, is duly commissioned and qualified as judge of the seventh judicial district of the State of Iowa, and as such is sole presiding judge of the district court of said Scott County.

Witness my hand and the seal of said court this 5th day of May, A. D. 1863.

{ SEAL DIST. COURT } (Signed) IRA M. GIFFORD,
{ SCOTT CO., IOWA. } *Clerk Dist. Court Scott Co., Iowa.*

[U. S. rev. stamp, 5 cts.: I. M. G., May 5, '63.]

537 (Indorsed:) James Thorington, sheriff, deed to Drawson Wulsin.

(Indorsed:) No. 25, eq. U. S. circuit court. James May vs. George L. Davenport & al., ex'c'rs, &., of A. Le Claire, & als. Def'ts' exhibit.

Filed Oct. 22, '63.
(S'g'd) W. G. WOODWARD,
Clerk C. C. U. S.

538 5.

Supreme Court of the United States.

JAMES MAY
v.
THE EX'UTORS OF THE WILL OF ANTOINE LE CLAIRE, and others. } In equity.

The following papers consist of transcripts of the following judgments:

1st. James May v. Swits & Wulsin.
2d. Geo. L. Davenport v. J. May.
3d. J. M. Smith v. J. May.
4th. Wm. Barrett v. J. May.
5th. Whittemore & Sons v. J. May.
6th. John P. Cook v. J. May.
7. Jer'h Dunlevy v. J. May.
8th. Mary Tumulty v. J. May.

W. J. WOODWARD, *Clerk.*

539 No. 1.—*May vs. Swits et al.*

EXHIBIT No. 1.

JAMES MAY
vs.
JOHN L. SWITS, DRAUSIN WULSIN.

(Indorsed:) Filed Oct'r 22, 1863.

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Page 2, 2, petition.
" 10, 8, original notice.
" 12, 9, note.
" 13, 10, deed of trust.
" 16, 12, trustee's sale.
" 17, 13, record entry.
" 20, 15, special execution.
" 22, 16, sheriff's sale.
" 23, 16, " return of sale.
" 25, 18, general execution.
" 27, 20, sheriff's sale.
29, 20, " return of sale.
33, clerk's certificate.

Transcript fees, $8 50.

540 STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court holden in and for said county, in the city of Davenport therein, on the 19th day of November, 1859, was present the Honorable John F. Dillon, sole presiding judge; Harry Leonard, sheriff of said county; and Ira M. Gifford, clerk of said court, when the following, among other, proceedings were had, to wit:

JAMES MAY
vs.
JOHN L. SWITS & DRAUSIN WULSIN. } Petition in equity for injunction.

Be it remembered that heretofore, to wit, on the 19th day of November, 1859, there was filed in the office of the clerk of the district court of Scott County a petition, which is in the words and figures following, to wit:

District court, Scott County, State of Iowa.

JAMES MAY
vs.
JOHN L. SWITS & DRAUSIN WULSIN. } Petition in equity.

Your petitioner, James May, respectfully shows that on the 21st day of May, 1857, he was seized and possessed of the following described property, situated in the city of Davenport, and Scott County, and State of Iowa, and known and designated on the map of the said city as the east half of block No. thirty-six, (36;) and that being so

541 seized & possessed, he did, on the day aforesaid, execute a conveyance of said premises to one John L. Swits, in trust to secure the payment of two certain notes executed by your petitioner to one Drauson Wulsin, bearing even date with said deed; one for the sum of $200, payable six months after the date thereof; and one for the sum of $2,200, payable in one year from date.

That the said conveyance was duly acknowledged, and was, on the 22d day of May, 1857, recorded in the office of the recorder of said Scott County, in book A of town-lot mortgages, page 390, as by reference thereto and more fully appear, & to which, for greater certainty, the plaintiff refers, and makes a part of this petition.

That said deed provided that in case default was made in the payment of said notes, or either of them, then the said Jno. L. Swits, as trustee as provided therein, was authorized to advertize the said property for the time and in the manner therein stated, and sell the said premises at the court-house door in said Scott County, for cash, to the highst bidder therefor, and apply the proceeds, or so much thereof as might be necessary, to the payment of said notes, rendering the surplus, if any, to your petitioner.

And your petitioner further shows that the whole consideration for the execution of said notes and deed of trust was the loan to your petitioner. by the defendant Drausin Wulsin, of the sum of two thousand dollars for the period of one year, at the rate of twenty per cent. per annum, to be paid semi-annually; and the said note of $200 was executed for the first six months' interest thereof, and the six months' interest for the other six months of said year was inserted in the said note of $2,200, which last note was given for the principal sum loaned as aforesaid, and the said six months' interest as aforesaid.

Your petitioner further shows that he duly paid, at or near the maturity thereof, the said note of $200 to the said Drausin Wulsin.

542 And your petitioner further shows that at the maturity of said $2,200 note the said Wulsin, by his agents, agreed to extend the same and the time of payment thereof, for one year further, upon the agreement that your petitioner would pay said Wulsin interest at the said rate of twenty per cent. per annum thereon; and that in pursuance of such agreement your petitioner did pay to said Drausin Wilson, as usurious interest thereon, the further sum of $200, and your petitioner cannot now say whether he has paid any further sum or not thereon.

Wherefore this petitioner charges that the said contract is usurious, and that he is entitled to a credit of $600 on the said note of $2,200; and that the said Wilson has no lien for any larger sum on said premises by virtue of the said notes and deed of trust.

And your petitioner further charges, upon information and belief, that the said Drausin Wulson is still the owner and holder of said note, and beneficially interested in the said deed of trust.

And your petitioner further shows that he is informed and believes, and so charges, that the said Jno. L. Swits, as trustee as aforesaid, and under the direction of the said Wulsin, has, under the power and authority contained in said deed of trust as aforesaid, published a notice of sale of the said premises in the Daily Democrat & News, a newspaper published in said county, as provided by the terms of said deed of trust, upon the ground that this petitioner has made default in the payment of the said note of $2,200, and claiming that that sum and interest, at the rate of ten per cent. per annum, payable from one year after the date of said note, is still due and unpaid on said note.

And your petitioner charges, upon information and belief, that
543 it is the intention of the said trustee, on the 19th day of November, 1859, at 2 p. m., at the court-house door in said county, under the powers and authority conferred in said deed, and under the said notice, to sell the said property for the purpose of paying the amount claimed to be due as aforesaid upon the said note for principal and interest, which said notice is as follows:

Trustee's sale.

Whereas, on the 21st day of May, A. D. 1857, James May, of Davenport, Scott County, Iowa, executed unto John L. Swits, as trustee, a certain deed of trust, conveying to said trustee the land in Scott County, Iowa, described as follows, to wit: The east half (½) of block thirty-six (36) in the city of Davenport, which said conveyance was made by the said James May for the purpose of securing the payment of two certain promissory notes, and the interest thereon, signed by said James May, dated the 21st day of May, A. D. 1857, payable to the order of Drausin Wulson; and one payable as follows, one for two hundred ($200) dollars, payable six months after date, and one for twenty-two hundred ($2,200) dollars, payable one year after date, with interest at ten per cent. per annum, after maturity, payable in currency.

And now said last-mentioned note having become due and payable, and the said James May having failed to pay the same, I, John L. Swits, trustee as aforesaid, do hereby give this public notice, that, by virtue of the power which is in me vested by said deed of trust, I will, on Saturday, the 19th day of November, A. D. 1859, at the hour of two o'clock in the afternoon of said day, at the court-house door in the city of Davenport, expose and offer for sale, at public auction, the parcel of land above described, or so much thereof as shall be necessary to satisfy and pay the amount of said note, with the interest thereon to the day of sale, together with all the costs and expenses attending said sale,
544 costs of this notice, and trustee's fees. Dated the 22d day of October, A. D. 1859.

oct 24-dts.] (Signed) JOHN L. SWITS, *Trustee.*

And your petitioner further shows, upon his information and belief, that the said premises are of much greater value than the amount really due on said note and deed of trust, and of greater value than the amount claimed to be due as aforesaid, and that if said property is sold on the 19th day of November, 1859, as aforesaid, the same will be greatly sacrificed; that since information of said notice of such sale has reached your petitioner, he has not had time to procure the money necessary to pay said note or the sum herein by him claimed to be due thereon, and that it is his desire and intention, if such sale is made on the 19th day of November, 1859, to redeem the said property, and for that purpose to file a supplemental petition herein, making the purchaser at such sale a party thereto, with the necessary & proper averments, and praying that said sale may be set aside, and that he may redeem the same under such sale; that your petitioner has this day, for the first time, seen the said notice of sale.

Your petitioner prays that the said defendants may be required to answer this petition, their answer under oath being waived; and that this court will ascertain the amount due on said note, and for what amount the said Wulson has a lien, if any, on said premises, under said deed of trust; and that this court will enjoin the said defendants from

selling the said property under said deed of trust; and that a
545 temporary injunction issue for that purpose, which shall be made final; and that the said defendants, & all other persons claiming under them, or any sale to be made under said deed of trust, may be decreed to have had due notice of the rights of this petitioner in the premises as herein alleged; & that your petitioner may have leave to file a supplemental petition herein as aforesaid; & that he may have such other and further decree in the premises as may be agreeable and meet in [in] equity.

(Signed) JAMES MAY.

PARKER & EDWARDS, *Pl't'ff's Att'ys.*

STATE OF IOWA, *Scott County, ss:*

James May, being duly sworn, says that the foregoing petition, and the facts therein stated, are true to his best knowledge, & those matters therein stated on information & belief, are true, as he very believes.

(Signed) JAMES MAY.

Subscribed and sworn to before me this 18th day of November, A. D. 1859.

[NOTARIAL SEAL.] (Signed) ALFRED EDWARDS,
Notary Public, Scott Co., Iowa.

546 Then afterwards, to wit, on the 19th day of November, A. D. 1859, there was filed in the clerk's office of said court the original notice, in words & figures following, to wit:

In district court.

STATE OF IOWA, *County of Scott, ss:*

JAMES MAY
vs.
JOHN L. SWITS, DRAUSIN WULSON, DEFENDANTS. } Original notice.

To the defendants:

You are hereby notified that there is now on file in the office of the clerk of the district court of said county a petition of James May claiming that the notes mentioned in a deed of trust executed by Jas. May to J. L. Swits as trustee, dated Ap'l 21, '57, describing the east half of block 36, in Davenport, and also the said deed of trust, were executed under a usurious contract that six hundred dollars should be credited upon the $2,200 note, praying that the court will ascertain the amount due on said notes and deed of trust, & that the amount of the lien thereunder, if any, may be ascertained, & that an injunction may issue to enjoin you from selling said property under the notice and power of sale, which may be made final, & that petitioner may file a supplemental petition making any purchaser at the sale a party thereto for the purpose of redeeming said property under said sale, if any is made, and unless you shall appear and answer said petition, on or before the first day of the next term of said court to be holden on the 4th Monday of January, A. D. 1860, plaintiff will take decree for, according to the prayer of the said petition.

Dated Nov. 19th, 1859.

(S'g'd) PARKER & EDWARDS,
Plaintiff's Attorneys.

547 You are further notified that at the opening of court this a. m., [at] as soon as counsel can be heard, the pl't'ff will apply for an injunction to Hon. John F. Dillon, at the court-house in Davenport, for an injunction as prayed for.

Nov. 19th, 1859.

(Signed) PARKER & EDWARDS, *Pl'ff's Att'ys.*

Upon which is the following endorsement:

"Service accepted of the within notice for both of the above-named defendants, Nov. 19th, 1859, 9½ o'clock a. m.

(Signed) "JNO. L. SWITS."

Then afterwards, to wit, there was filed the note in the clerk's office of said court in words and figures as follows, to wit:

$2,200. DAVENPORT, IOWA, *May 21st*, 1857.

One year after date I promise to pay to the order of Drausin Wulsin, at the banking-house Chubb Bro., Barrow & Co., twenty-two hundred dollars, value received, with interest at 10 per cent. p'r annum after maturity, payable in currency.

(Signed) JAMES MAY.

No. Due

(Indorsed:) Protested by me for non-payment this 24th day of May, A. D. 1858.

M. M. PRICE, *N. P.*

Upon which appears the following endorsements:

Received, June 5th, 1858, two hundred on this note; the balance, 2,000, is extended to the 21 August, 1858, with (10) ten per cent. int. from May, 1858.

(Signed) SAM'L C. YOUNG, *for D. Wulsin.*

Received, S'er 4th, 1858, fifty dollars interest, due on this note up to Aug. 21st, 1858. This note is extended to three months, with interest at ten $\frac{10}{100}$.

(Signed) D. WULSIN.

548 This note is extended to the 21st May, 1859, with int. at 10 %, from 21st Aug., 1858.

(Signed) D. WULSIN,
P'r S. C. YOUNG.

Then afterwards there was filed in the clerk's office of said court the deed of trust, in words and figures as follows, to wit:

This deed of trust and warranty, made this 21st day of May, A. D. 1857, between James May, of Davenport, of the county of Scott and State of Iowa, of the first part, and John L. Swits, of the county of Scott & State of Iowa, of the second part, witnesseth that said party of the first part, for the consideration of twenty-four hundred dollars, the receipt whereof is hereby acknowledged, does by these presents grant and convey unto said party of the second part, heirs and assigns, forever, the tract of real estate in the county of Scott and State of Iowa described as follows, to wit: The east half (½) of block thirty-six (36) in the city of Davenport: To have and to hold the premises above described, with

all the appurtenances thereunto belonging, to said James May, & to his heirs and assigns, forever, the said James May hereby covenanting for his executors and administrators that he is seized of a good and indefeasible fee-simple title; that the premises are free from every incumbrance; that he has full right to sell & convey the same in the manner aforesaid, and he will warrant and defend the title unto the said party of the second part, and his heirs and assigns, against the lawful claims of all persons whomsoever. In trust, however, for the following uses and pur-
549 poses only, to wit, said James May having this day executed unto Drausin Wulsin his certain promissory notes, one for the sum of twenty-two hundred dollars, payable one year from date, at the banking-house of Chubb Bro., Barrow & Co., and the other note, payable at the same place six months after date, for two hundred dollars, each with interest, payable at the rate of ten (10) per cent. per annum after maturity.

Now, the better to secure the payment of said note, said party of the first part hereby conveys said premises to said John L. Swits for the security of said payment, and in case said May shall neglect to pay said notes when due, or either of them, and the interest thereon, said Swits, as such trustee, shall be authorized to advertise said property in any newspaper, printed in said county of Scott, at least three weeks, and sell the same at public auction at the court-house door in the city of Davenport to the highest bidder for cash, in parcels of such size as said Swits shall deem most advantageous for said party of the first part, or so much thereof as shall be necessary to satisfy the amount then due or to become due, with costs & expenses of making such sale, and pay over the balance of the proceeds, after paying the debts, costs, and expenses as aforesaid, if any there be, to the part of the first part, heirs, assigns, or representatives, upon demand; and he, the said Swits, will be empowered to execute a deed in fee-simple for the premises aforesaid, or so much as he may sell, with all the covenants touching title herein contained to the purchaser, which deed will be absolute and prevent said party of the first part, or his heirs or assigns, from setting up any claim thereto either in law or equity. The said party of the first part further agrees that in case of the death, incapacity, or refusal of the said Swits to act, then the acting judge of the county court of
550 Scott County shall be authorized and requested to appoint a suitable person to act as trustee, and the person so appointed will be clothed with all the power that is given herein to said Swits. Upon the payment of the indebtedness above specified, with reasonable costs and charges, if after maturity, (and if any have been made,) this deed is to be void.

In testimony whereof said party of the first part has hereunto set his hand and seal the day and year above written.

(Signed) JAMES MAY. [SEAL.]

STATE OF IOWA, *County of Scott, ss:*

Be it remembered that on this 22d day of May, A. D. 1857, before the undersigned, a notary public within and for said county, personally appeared James May, to me personally known to be the identical person whose name is affixed to the foregoing deed as grantor, and acknowledged the instrument to be his voluntary act and deed.

Witness my hand and notarial seal the day and year last above written.

[SEAL.] (Signed) WM. HANSEN, *N. P.*

Upon which is the following endorsement:

"Filed for record May 22d, 1857, at 3½ o'clock p. m. Recorded in book "A," town mortgages, page 398.
(Signed) "J. McCOSH, *Recorder.*"

To which is also attached the following:

Trustee's sale.

(For a copy of this see page 5 ante.)

And afterwards, to wit, on the 19th day of November, 1859, there was made the record entry on the records of the district court for
551 said county in words and figures as follows, to wit:

JAMES MAY
vs.
JOHN L. SWITS, DRAWSON WULSON. } 5118.

Now, on this 19th day of November, A. D. 1859, this cause came on to be heard upon a motion of said plaintiff to restrain said defendant from selling the premises described in pl'ff's bill—for the pl'ff appeared Messrs. Parker and Edwards, and for the said defendant Geo. S. C. Dow—when in open court it is admitted by the said pl'ff that he is indebted to the said defendant Drawson Wulson in the sum of nineteen hundred and seven dollars, and that said indebtedness is drawing interest at the rate of ten per cent. per annum, and the said Drawson Wulson now in open court admits that there is to him so due upon the note mentioned in pl'ff's bill; and the court inspects the pleadings and the note in question as well as the deed of trust made by said pl't'ff to secure to said Drawson Wulson the payment thereof, and finds the amount aforesaid to be due, whereupon, the parties consenting and the court being advised, it is ordered, adjudged, and decreed that the said Drawson Wulson do have and recover of and from said James May the aforesaid sum of nineteen hundred and seven dollars, with interest thereon at the rate of ten per cent. per annum from the date of this decree, for which sum the said Drawson Wulson shall have his lien upon the premises in said bill described, to wit, the east half of block thirty-six (36) in the city of Davenport, Scott County, Iowa, to date and take effect from and after the date of the said deed of trust, to wit, the 31st day of May, A.
552 D. 1857. It is further ordered and adjudged, the parties hereto consenting, that the said John L. Swits be restrained, and he is hereby restrained and enjoined, from proceeding to sell said premises, or any part thereof, until the 19th day of May, A. D. 1860. It is further ordered, adjudged, and decreed, the parties consenting, that in case the said May shall fail to pay the said Drawson Wulson the aforesaid sum of $1,907 00, with interest as aforesaid, and the costs of this suit, on or before the said 19th day of May, A. D. 1860, then, that the sheriff of Scott County do sell the said premises, or so much thereof as may be necessary to said sum, with interest and costs as aforesaid, and accruing costs upon execution as lands are sold upon foreclosure of mortgages, and that to the purchaser or purchasers of the said premises that he execute a deed or deeds of the same which shall convey all the right, title, & interest, the said May, in and to the premises so sold, of which he was siezed or possessed on the day of the date of said deed of trust,

to wit, the 21st day of May, A. D. 1857, and that from and after the day of such sale the said May and all persons claiming or to claim the same by, through, or under him, by conveyance subsequent to the said 21st of May, A. D. 1857, shall be barred and foreclosed from setting up any claim thereto in law or equity; and it is further ordered that if said premises shall fail to sell for sufficient to satisfy and pay the amount aforesaid, with the costs accrued and to accrue, that said Drawson Wulson have his general execution against the said James May for the balance which remains unsatisfied, & that, if any surplus remain after the sale and payment as aforesaid, that the sheriff bring the same into court.

553 Then afterwards, to wit, on the 21st day of May, 1860, there was issued out of the clerk's office of said court special execution in words and figures as follows, to wit:

Special execution.

STATE OF IOWA, *Scott County, ss:*

The State of Iowa to the sheriff of Scott County, greeting:

Whereas James May, plaintiff, heretofore filed a petition in the district court of said Scott County, for an injunction restraining a sale under a deed of trust upon the real estate hereinafter described, making Drawson Wulson & John L. Swits defendants therein.

And whereas the said district court, at the November term thereof, A. D. 1859, viz., on the 19th day of November, A. D. 1859, in the said suit, rendered judgement in favor of said Drawson Wulson, and against James May, plaintiff, for the sum of nineteen hundred and seven dollars debt, and costs of suit taxed at five $\frac{50}{100}$ dollars, with interest on said debt at the rate of 10 per cent. per annum from the said date of said judgement, and ordered that the said real estate hereafter described, or so much thereof as might be necessary, be sold according to the statute in such case made and provided to satisfy said judgement, with the interests and costs as aforesaid, and ordered a special execution to issue:

Now, these are to command you, in the name and by the authority of the State of Iowa, that of the following described real estate in Scott County, Iowa, viz., the east half of block thirty-six (36) in the city of Davenport, or so much thereof as may be necessary, by levy and sale pursuant to the statue in such case made and provided, you cause
554 to be made the said sum of nineteen hundred and seven dollars debt, and said sum of five & $\frac{50}{100}$ dollars costs, with interest as aforesaid, and all accruing costs, whereof James May is convicted, as appears to us of record.

And have you that money before us within seventy days, to render to those who may be legally entitled thereto, with a return of your acts and doings in the premises hereon endorsed or annexed, and hereof fail not at your peril.

Witness Ira M. Gifford, clerk of the district court of Scott County, and the seal of said court affixed at office in the city of Davenport, in said county, this the 21st day of May, A. D. 1860.

[L. S.] (Signed) IRA M. GIFFORD,
Clerk of District Court Scott County, Iowa.

Sheriff's sale.

In the district court of Scott Co., State of Iowa.

THE STATE OF IOWA, *Scott County:*

By virtue of an execution issued from the office of the clerk of the district court of Scott County, State of Iowa, in favor of Drawson Walson, and against James May, dated the 21st day of May, A. D. 1860, and to me directed, commanding me, that of the real estate hereinafter mentioned, of the said James May, I make, or cause to be made, the sum of nineteen hundred and seven (1,907) dollars, with interest and costs, I levied upon the east half of block number thirty-six (36) in the city of Davenport, Scott County, Iowa.

And I hereby give public notice that I shall offer for sale at public outcry, at the court-house door in the city of Davenport, Scott County, Iowa, on Wednesday, the 20th day of June, 1860, at the hour of one o'clock p. m. of said day, to the highest and best bidder therefor in cash, the above-described property, or sufficient thereof to satisfy the above debt, with interest and costs.

Dated this 21st day of May, 1860.

JAMES THORINGTON,
may22-dts] *Sheriff of Scott County, Iowa.*

CORBIN & DOW, *Pl'ff's Att'ys.*

To which is attached the sheriff's return as follows:

By virtue of the within writ of execution, and in pursuance thereof, I have this 21st day of May, 1860, levied upon the following described real estate, lying and being situated in Scott County, Iowa, to
555 wit, the east half of block number thirty-six (36) in the city of Davenport, Scott County, Iowa, and as a further return upon this writ of execution I certify that on this 21st day of May, 1860, I advertised the same for sale at public outcry, at the court-house in the city of Davenport, in said Scott County, Iowa, on Wednesday, the 20th day of June, 1860, at the hour of one o'clock p. m. of said day, by posting printed notices giving the time and place of said sale as above designated in three public places in said Scott County; one of said notices being posted at the door of the court-house of said Scott County, where the last district court was held in and for said county, to wit, in the city of Davenport; and one at the post office in said city of Davenport; and one of said notices being posted in a public place in Davenport Township, in said county, wherein the said real estate is situated; and, in accordance with the statute in such cases made and provided, I advertised the said sale of the said real estate in the Davenport Gazette, a newspaper published in the city of Davenport, in said Scott County, for the space of four weeks prior to said sale, the same being a copy of the notices posted as aforesaid. And as a further return upon this writ, I certify that on Wednesday, the 20th day of June, 1860, at the hour of one o'clock p. m. of said day, at the door of the court-house of said county, that being the time and place of said sale as advertised by said notices aforesaid, a copy of which is attached to the execution in this case, I did offer for sale the above-described real estate at public outcry, and then and there I did sell the same unto Drawsin Wulsin for the sum of twelve hundred ($1,200) dollars, he being the highest and

556 best bidder therefor in cash, the same was struck off to him as the purchaser thereof.

Dated this 20th day of June, 1860.

(Signed) JAMES THORINGTON,
Sheriff of Scott County, Iowa.

Bill of costs.

County costs	$5 50	
Fi. fa	1 25	
		$6 75
Levy & adv	12 00	
Posting not. & cop	1 70	
Selling & deed	2 00	
½ com's & on $1,200	9 50	
		$25 20
		$31 95

Rec'd June 20th, 1860, deed of within premises; consideration twelve hundred dollars.

(Signed) CORBIN, DOW & BROWN, *for Pl'ff.*

Rec'd two $\frac{50}{100}$ dollars, filing fee advanced.

(Signed) CORBIN, DOW & BROWN.

Then afterwards, to wit, on the 2d day of July, 1860, there was issued out of the office of the clerk of said court the general execution in words and figures as follows, to wit:

STATE OF IOWA, *Scott County:*

The State of Iowa to the sheriff of Scott County, greeting:

We command you, as heretofore, that of the goods, chattels, stock, or interest in any company, debts due, property in the hands of third
557 persons, lands and tenements, (which are not exempt by law from execution,) of James May, found in your county, or so much thereof as may be found necessary, as well as of any property you may have in your possession, taken by a writ of attachment lately directed to you, by us issued at the suit of the plaintiff hereafter mentioned, you cause to be made, in conformity with the statute in such case made & provided, the sum of nineteen hundred & twelve & $\frac{50}{100}$ dollars, ($1,912$\frac{50}{100}$,) amount due, including debt, interest, and costs, with interest thereon at the rate of 10 per cent. per annum, in a certain judgement recovered in our district court of Scott County, on the 19th day of November, A. D. 1859, at the court-house in the city of Davenport and county of Scott aforesaid, wherein Drawson Wilson & John L. Swits are plaintiffs, and James May is defendant, which they sustained by reason of the non-performance of certain promises and undertakings made by the said defendant, and adjudged to the said plaintiff in our said court, for the damages and costs in said suit in this behalf expended, whereof the said defendant is convicted, as appears to us of record.

And have you that money before us within seventy days, to render to those who may be legally entitled thereto, with a return of your acts & doings in the premises hereon endorsed or annexed, & hereof fail not at your peril.

Witness Ira M. Gifford, clerk of the district court of Scott County, & the seal of said court affixed, at office in the city of Davenport, in said county, this the 2d day of July, A. D. 1860.

[L. S.] (Signed) IRA M. GIFFORD,
Clerk of District Court, Scott County, Iowa.

558 *Sheriff's sale.*

In the district court of Scott Co., State of Iowa.

THE STATE OF IOWA, *Scott County :*

By virtue of an execution issued from the office of the clerk of the district court of Scott County, State of Iowa, in favor of Drewson Walson and against James May, dated the 2d day of July, 1860, and to me directed, commanding me that of the goods, chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of the said James May, I make, or cause to be made, the sum of nineteen hundred and twelve 50-100 dollars, with interests and costs, I levied upon the following described real estate in Scott County, Iowa, viz: The southeast quarter of section No. fourteen, (14,) township No. seventy-eight (78) north, range No. three (3) east, of the fifth (5th) principal meridian. Also part of lot No. four (4) in block No. twenty (20) in the city of Davenport, commencing at the southeast corner of said lot No. four, (4;) thence west eighty (80) feet; thence north forty (40) feet; thence east eighty (80) feet; thence south forty (40) feet, to the place of beginning. Also the following part of said lot No. four, (4,) commencing at the northeast corner of said lot No. four, (4;) thence south fifty (50) feet; thence west eighty (80) feet; thence north fifty (50) feet; thence east eighty (80) feet, to the place of beginning. Also lots Nos. two, (2,) and five, (5,) and six, (6,) in block No. thirty-eight (38,) in the city of Davenport; all taken as the property of said James May.

And I hereby give public notice that I shall offer for sale at public outcry, at the court-house, in the city of Davenport, Scott County, Iowa, on Saturday, the 29th day of Sept., 1860, at the hour of two o'clock p. m. of said day, to the highest and best bidder therefor in cash, the above-described property, or sufficient thereof to satisfy the above debt, with interests and costs.

Dated this 30th day of August, 1860.

JAMES THORINGTON,
Sheriff of Scott County, Iowa.

CORBIN & DOW, *Plaintiff's Att'ys.*
aug31-dts]

To which is attached the sheriff's return as follows, to wit:

By virtue of the within writ of execution, and in pursuance thereof, I have, this 30th day of August, 1860, levied upon the following described real estate lying and being situated in Scott County, Iowa, to wit: The southeast quarter of section No. fourteen, (14,) township No. seventy-eight (78) north, range three (3) east of the fifth principal meridian. Also part of lot No. four (4) in block No. twenty, in the city of Davenport, commencing at the southeast corner of said lot No. four; thence west eighty (80) feet; thence north forty (40) feet; thence east eighty (80) feet; thence forty (40) feet to the place of beginning. Also the following part of said lot No. four (4,) commencing at the northeast

corner of said lot No. four, (4;) thence south fifty feet; thence west eighty (80) feet; thence north fifty feet; thence east eighty (80) feet to the place of beginning. Also lots Nos. two, (2,) five, (5,) & six (6,) in block No. thirty-eight, (38,) in the city of Davenport, all taken as the property of said James May.

559 And as a further return upon this writ of execution, I certify that on this 30th day of August, 1860, I advertised the same for sale at public outcry at the court-house in the city of Davenport, in said Scott County, Iowa, on Saturday, the 29th day of September, 1860, at the hour of 2 o'clock p. m. of said day, by posting printed notices, giving the time & place of said sale as above designated, in three public places in said Scott County; one of said notices being posted at the door of the court-house of said Scott County where the last district court was held in and for said county, to wit, in the city of Davenport, and one at the post office in said city of Davenport, and one of said notices being posted in a public place in Davenport Township in said county wherein the said real estate is situated; and in accordance with the statute in such cases made and provided, I advertised the said sale of the said real estate in the Davenport Gazette, a newspaper published in the city of Davenport in said Scott County for the space of four weeks prior to said sale, the same being a copy of the notices posted as aforesaid.

And as a further return upon this writ, I certify that on Saturday, the 29th day of September, 1860, at the hour of 2 o'clock p. m. of said day, at the door of the court-house of said county, that being the time and place of said sale as advertised by said notices aforesaid, a copy of which is attached to the execution in this case, I did offer for sale the above-described real estate at public outcry, and then and there I did sell the same as follows, to wit:

The southeast quarter of section number fourteen, (14,) township No. seventy-eight (78) north, of range No. three (3) east, of the fifth P. M., for the sum of five (5) dollars, to Drauson Wulsion.

A part of lot No. four (4) in block No. twenty (20) in the city of Davenport, commencing at the southeast corner of said lot No. four;

560 thence west eighty (80) feet; thence north forty (40) feet; thence east eighty (80) feet; thence south forty (40) feet, to the place of beginning, for the sum of twenty-five (25) dollars, to Drauson Wulsin.

Also the following part of said lot No. four (4) in said block No. twenty in the city of Davenport, commencing at the northeast corner of said lot No. four, (4;) thence south fifty (50) feet; thence west eighty (80) feet; thence north fifty (50) feet; thence east eighty (80) feet to the place of beginning, for the sum of twenty-five (25) dollars, to Drauson Wulsin.

Also lot No. two (2) in block No. thirty-eight (38) in the city of Davenport, for the sum of three hundred (300) dollars, to said Drausin Wulsin; also lot No. five (5) in block No. thirty-eight (38) in the city of Davenport, for the sum of two hundred (200) dollars, to said Drausin Wulsin; also lot number six (6) in block No. thirty-eight (38) in the city of Davenport, for the sum of two hundred (200) dollars, to said Drauson Wulsin; that is, all of the above-described property unto Drauson Wulsin for the sum of seven hundred and fifty-five dollars, he being the highest and best bidder therefor in cash, the same was struck off to him, as the purchaser thereof.

Dated this 29th day of September, 1860.

(Signed) JAMES THORINGTON,
Sheriff of Scott County, Iowa.

Bill of accruing costs.

Copy inventory & mileage	$3 10
Advertising	10 00
Post. notices	1 80
Sale and certificate	2 00
½ com., $755	7 30
	24 20

Rec'd twenty-four $\frac{20}{100}$ dollars, my fees in full, Dec. 1, '60.

561 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full, true, and complete transcrip of the papers on file in my office, and of the record entry, and of the executions and their returns, as the same appear on file and on record in the above-entitled cause, wherein James May is plaintiff, and John L. Swits & Drausin Wulsin are defendants.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at office in the city of Davenport in said county, this 13th day of April, A. D. 1863.

[L. S.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

[5-cents U. S. revenue stamp: I. M. G., Apr. 13, '63.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, do hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 13th day of April, A. D. 1863.

(Signed) JOHN F. DILLON,
Judge 7th Judicial District.

[5-cents U. S. revenue stamp: J. F. D., Apr. 13, '63.]

562 (Indorsed:) No. 25, eq. U. S. circuit court, district of Iowa. James May vs. George L. Davenport & al., ex'c'rs of A. Le Claire, & als. Def'ts' exhibits. No. 25, eq.

Filed October 22, '63.
(S'g'd) W. G. WOODWARD,
Clerk C. C. U. S.

563 No. 2.—*Davenport vs. May.*

EXHIBIT No. 2.

GEORGE L. DAVENPORT
vs.
JAMES MAY.

Transcript of record entries.

(Indorsed:) Filed Oct'r 22, 1863.—Fees, $1 00.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court holden in and

for said county, in the city of Davenport therein, on the sixteenth day of June, 1860, was present the Honorable John F. Dillon, sole presiding judge; James Thorington, sheriff of said county; and Ira M. Gifford, clerk of said court, when the following among other proceedings were had, to wit, as appears on record entry 7, page 248.

GEO. L. DAVENPORT
vs. } 5420.
JAMES MAY.

This day this cause came on to be heard, & the defendant May appears and files his cross-bill.

Then afterwards, to wit, on the 1st day of March, A. D. 1861, the following entry was made, as appears on record 8, page 144, in words and figures as follows, to wit:

564 GEO. L. DAVENPORT
vs. } 5420.
JAMES MAY.

This day this cause came on to be heard on application for a change of venue to Johnson Co., Iowa; and the court, on hearing arguments counsel, orders that the venue be changed to Johnson County, Iowa.

Then afterwards, to wit, on the 11th day of June, 1861, the following entry was made, as appears on record 8, page 286, in words & figures as follows, to wit:

GEO. L DAVENPORT
vs.
JAMES MAY.

We consent that this cause be discontinued on the part of the complainant, and on behalf of respondent discontinued and withdrawn his answer and cross-bill herein filed. Entry to be made as of Feb'ry term, A. D. 1861. Def't has leave to withdraw deposition from files.

(Signed) CHAS. E. PUTNAM, *Att'y for Complainant.*
" PARKER & EDWARDS, *Att'ys for Def't.*

STATE OF IOWA, *Scott County:*

I, Ira M. Gifford, clerk of the district court in & for said county, do hereby certify that the foregoing is a full, true, and complete transcript of the record entries in the above-entitled cause.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, in the city of Davenport
565 in said county, this 9th day of May, A. D. 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk Dist. Court, Scott Co., Iowa.

[5-ct. U. S. revenue stamp: I. M. G., May 9, '63.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 9th day of May, A. D. 1863.

(Signed) JNO. F. DILLON,
Judge 7th Judicial District..

[5-ct. U. S. revenue stamp: J. F. D., May 9, '63.]

566

567 (Indorsed:) 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., exe'rs of A. Le Claire, & als. Def'ts' exhibits.

Filed Oct. 22, '63.

W. G. WOODWARD,
Clerk C. C. U. S.

568 No. 3.—*Smith vs. May.*

EXHIBIT NO. 3.

(Indorsed:) Filed Oct. 22, 1863.

JAMES M. SMITH }
vs.
JAMES MAY. }

Index.

Page 2. Exhibita.
" 17. Petition.
" 20. Original notice.
" 20. Record entry.
" 21. Execution.
" 22. Garnishee notice.
" 24. Answer of garnishee.
" 26. Reply.
" 27. Clerk's certificate.

Transcript fees, $9 00.

569 STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court, holden in and for said county, in the city of Davenport therein, on the 5th day of December, A. D. 1861, was present the Honorable John F. Dillon, sole presiding judge; James Thorington, sheriff of said county; and Ira M. Gifford, clerk of said court; when [when] the following, among other, proceedings were had, to wit:

JAMES M. SMITH }
vs. } 6748.
JAMES MAY. }

Be it rembered that heretofore, to wit, on the 9th day of October, A. D. 1861, there was filed in the office of the clerk of the district court of Scott County a petition, which is in the words and figures following, to wit:

EXHIBIT "A."

ALLEGHENNY COUNTY,
The Commonwealth of Pennsylvania, ss:

In the district court for said county at No. 736 of July term, 1860, it is there contained as follows:

Shannon.

JAMES M. SMITH
vs.
JAMES MAY. } No. 736.

Summons case to 4th Mond. July. Affidavit & copy of note filed for $1,124 74.

Served July 19, 1860, by copy to def't Sh'ff G., $100, p'd. July 31, 1860. Judgement in default of an appearance, and affidavit of
570 defence. Sum due liquidated at $1,127 36, (eleven hundred and twenty seven $\frac{36}{100}$ dollars.) Fi. fa. No. 24, Nov. 7, 1860.

Judgement docket.

May, James.....	J. M. Smith.....	736	July..	1860..	July 31, 1860....	$1,127 36

In the district court of Alleghenny County,

JAMES M. SMITH
vs.
JAMES MAY. } No.

To *Prott'y of D. C.:*

Issue summons, trespass on the case, &c., returnable to the 4th Monday July.

(Signed) P. C. SHANNON, *Pl'ff Att'y.*

Copy of draft sued on.

$1,050. DAVENPORT, IOWA, *Jan'y 17th*, 1859.

Four months after date pay to the order of Mr. James M. Smith, of Philadelphia, one hundred and fifty dollars, for value received, which, without further advice, charge to account of, yours truly,

(Signed) JAMES MAY.

Mr. JOHN ANDOE, *Pittsburgh, Pa.*

ALLEGHENNY COUNTY, *ss:*

Before me came personally Cornelius Scully, of said county, who being duly sworn according to law, doth depose & say that he is the
571 duly authorized agent of the said James M. Smith within named; that the above and within is a true copy of the draft or paper sued on; that the said James May, as drawer of the same, is justly indebted to said James M. Smith in the amount thereof, viz:

	$1,050 00
With interest on same to this date.....	73 33
Protest.....	1 41
In all amounting to.....	1,124 74

All of which still remains due and unpaid, to the best of his knowledge and belief; which bill was protested for non-payment.

(Signed) CORNELIUS SCULLY, *Agt.*

Sworn to and subscribed before me this 19th of July, 1860.

(Signed) D. ARMSTRONG.

ALLEGHENNY COUNTY, *ss:*

James May, late of said county, yeoman, was summoned to answer James M. Smith of a plea of trespass on the [the] case, &c.; whereupon the said James M. Smith, by his attorney, complains for that whereas the said defendant, to wit, on the 17th of January, 1859, at Davenport, that is to say, at said county, according to the usage and customs of merchants, &c., made his certain bill of exchange in writing, bearing date a certain day and year therein mentioned, to wit, the day and year aforesaid, & thereby then & there requested one John Andoe, four months after the date thereof, to pay to said pl'ff, or order, the sum of ten hundred & fifty dollars, & for balance received, and then and there delivered the said bill of exhange to said plaintiff, which bill of exchange the said Andoe afterwards, to wit, on the day and year aforesaid, at the county aforesaid, upon sight thereof, accepted according to the said usage and custom of merchants; and the said plaintiff avers that after-
572 wards, to wit, on the 20th of May, 1859, at the county aforesaid, the said bill of exchange was presented and shown to the said John Andoe for payment according to the said usage and custom of merchants, and the said John Andoe was then & there requested to pay the said sum of money therein specified according to the tenor and effect of the said bill of exchange, but that the said Andoe did not, nor would, at the said time when the said bill of exchange was so presented and shown to him for payment thereof as aforesaid, or at any time before or afterwards pay the said sum of money therein specified, or any part thereof, then and there wholly neglected & refused so to do, of all which said several premises the s'd def't afterwards, to wit, on the date last aforesaid, county aforesaid, had had notice, by means whereof, &c., according to the said usage & custom of merchants, the said def't then and there became liable to pay to said pl'ff said sum of money in said bill specified, when he would be thereto afterwards requested; & being so liable, he, s'd def't, in consideration thereof, afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, and took and then and there faithfully promised the said pl'ff to pay him said sum of money in said bill of exchange specified, when he, the said def't, should be thereunto afterwards requested; yet said def't, not regarding his said promise and undertaking, the aforesaid sum of money in said bill mentioned, or any part thereof, unto said pl't'ff has not paid, although often requested by said pl't'ff so to do, but the same to him to pay has altogether refused, and still does refuse, to the damage of said pl't'ff, in fifteen hundred dollars, and therefore he brings suit, &c.

(Signed) P. C. SHANNON, *Pl'ff's Att'y.*

JOHN DOE, RICHARD ROE, *Pledger, &c.*

573 District court, No. 736, July term, 1860.

JAMES M. SMITH
vs.
JAMES MAY.

[SEAL.] THE COMMONWEALTH OF PENNSYLVANIA,
Alleghenny County, ss:

To the sheriff of said county, greeting:

We command you that you summon James May, so that he be and appear before our district court to be holden at the city of Pittsburgh, in and for the said county, on the 4th Monday of July, 1860, next, there to answer James M. Smith of a plea of trespass on the case; and have you then and there this writ.

Witness the Hon. M. Hampton, president judge of our said court, the 17th day of July, A. D. one thousand eight hundred & sixty.

(Signed) D. ARMSTRONG, *Prothonotary.*

(Indorsed:) No. 736. July term, 1860. James M. Smith vs. James May. Summons in case to 4 Monday of July, 1860.

Served July 17th, 1860, by delivering a true & attested copy of the within notice to defendant.

So answer—

JAMES L. GRAHAM, *Sh'ff.*

Sh'ff G. $100 paid. Shannon, att'y for pl't'ff.

574 JAMES M. SMITH *vs.* JAMES MAY. } No. 736, July T., 1860.

To , *Prott'y of D. C.:*

Enter judgement against def't, James May, and in favor of the pl'ff in default of an appearance and affidavit of defence, and liquidate the same as per—

Plaintiff's aff. of claim, debt	1,050 00
Int. from 17 May, 1859, to this date	75 95
Protest	1 41
	$1,127 36

With costs of suit, &c.

(Signed) P. C. SHANNON, *Att'y for Pl'ff.*

(Indorsed:) No. 736. July, 1860. Filed July 31, 1860.

JAMES M. SMITH *vs.* JAMES MAY. } No. 736, of July T., 1860.

To , *Proth'y:*

Issue fi. fa. for debt, interest, and costs.

(Signed) P. C. SHANNON, *Att'y for Pl'ff.*

JULY 31, 1860.

(Indorsed:) No. 24, Nov., 1860. Ex. issued July 31, 1860.

575 Execution, docket entry.

Shannon.

JAMES M. SMITH
vs.
JAMES MAY.

Fi. fa. No. 736. July T., 1860. Debt $1,127 36. Int. from July 31, 1860.

Att'y	$4
Prot. A	2 41
Sh'ff G., paid	1 00
" "	19

Nulla bona.

Al fi. fa. No. 84. Jan'y, 1861.

ALLEGHENNY COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Alleghenny, greeting:

We command you that of the goods and chattels, lands and tenements, of James May, late of your county, in your bailiwick, you cause to be levied and made the sum of eleven hundred and twenty-seven $\frac{36}{100}$ dollars, lawful money of Pennsylvania, which James M. Smith, lately in our district court, before our judges at Pittsburgh, recovered against him of debt, and also ten dollars which, in our said court, were adjudged to the said plaintiff for the damages which he sustained, as well by occasion of the detention of that debt, as for his costs and charges by him about this suit in that behalf expended, whereof the said defendant is convict, as appears to us of record; and have you that money before our judges at Pittsburgh, at our district court there to be held for the county aforesaid, the 4th Monday of November next, to render to the said plaintiff the debt, interest, and costs, and charges aforesaid.

Witness the Hon. Moses Hampton, president of our said court,
576 at Pittsburg, the 31st day of July, in the year of our Lord one thousand eight hundred sixty.

(Signed) D. ARMSTRONG, *Prothonotary.*

(Indorsed:) No. 24. Nov. term, 1860. James M. Smith vs. James May. Fi. fa. No. 736. July, 1860. Debt, $1,127 36. Issue f'r July 31, 1860.

Att'y	$4 00
Pro. A	2 41
Sh'ff G	1 00
Sh'ff G	19

Nulla Bona. So answer—

JAMES L. GRAHAM, *Sheriff.*

Shannon.

JAME M. SMITH
vs.
JAMES MAY.

No. 736, July T., 1860.—Fi. fa. No. 24, Nov. T., 1860.

To , *Proth'y A, District Court:*

Issue al. fi. fa. for debt & costs.

(Signed) P. C. SHANNON, *Att'y for Pl'ff.*

DEC. 22D, 1860.

577 (Indorsed:) No. 84. Jan'y, 1861. Ex. Issue Dec. 22, 1860.

Execution docket entry.

Shannon.

JAMES M. SMITH
vs.
JAMES MAY.

Al fi. fa., No. 24. Nov., 1860. Debt., $1,127 36. Int. from July 31, 1860.

Att'y	$4
Pro. A	2 91
Sh'ff G., pd	1 00
" " "	19
	5 00

Levy made on real estate, Dec. 26, 1860. Inquisition and condemnation, Dec. 27, 1860. Vend. ex. No. 15. April, 1861.

Inquisition indented and taken the twenty-seventh day of December, in the year of your Lord one thousand eight hundred and sixty, at the court-house in the city of Pittsburg, in the county of Alleghenny, before James L. Graham, sheriff of said county, by the oaths and affirmations of the jurors whose names are hereunto annexed, twelve good and lawful men of his bailiwick, who, upon their solemn oaths and affirmations, respectively, do say that the rents, issues, and profits of certain real estate as described in levy annexed, to wit:

Seized and taken in execution by virtue of a writ of fieri facias issued out of the district court of Alleghenny County, wherein
578 J. M. Smith, plaintiff, and James May, defendant, returnable to January term, A. D. 1861, No. 84, are not of a clear yearly value, sufficient beyond all reprizes within the space of seven years to satisfy the debt, interest, and costs in said writ mentioned.

In witness whereof as well the said sheriff as the inquest aforesaid, have hereunto set their hands and seals the day and year first above written.

(Signed) JAMES L. GRAHAM. [L. S.]

(Signed)
DANIEL BOISOL. [L. S.]
JOSEPH E. ROBINSON. [L. S.]
T. W. GRUBBY. [L. S.]
SIMON DUNN. [L. S.]
ARTHUR HOBSON. [L. S.]
JOHN A. SCOTT. [L. S.]

(Signed)
J. V. HOAG. [L. S.]
HENRY PRATT. [L. S.]
WM. WARD. [L. S.]
WM. B. HASLET. [L. S.]
L. N. WHITE. [L. S.]
M. B. BROWN. [L. S.]

By virtue of the annexed writ, I have seized and taken in execution, all the right, title, interest, and claim of the defendant James May, of, in, and to all that certain lot or piece of ground situate in First Ward, in the city of Pittsburg, bounded and described as follows, to wit: Beginning on Front street, at the corner of lot now or formerly belonging to the heirs of C. Magee, deceased, and running back on line of said lot eighty feet, more or less, to lot now or formerly belonging to John Ackins; thence eastwardly along the line of said lot forty feet; thence southwardly and parallel with said Magee's lot eighty feet to Front street; thence along Front forty feet to the place of beginning, being parts of lots Nos. 241 & 242 in Col. Wood's plan, upon which is erected a three-story brick dwelling, carriage-house & stable, bake-house.

December 26, 1860. So answers—

(Signed) JAMES L. GRAHAM, *Sheriff.*

579 ALLEGHENNY COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of the county of Alleghenny, greeting:

We command you, as before, that of the goods and chattels, lands and tenements, of James May, late of your county, in your bailiwick, you cause to be levied and made the sum of eleven hundred and twenty dollars, lawful money of Pennsylvania, which James M. Smith, lately in our district court, before our judges at Pittsburg, recovered against him of debt, and also ten dollars, which in our said court were adjudged to the said plaintiff for the damages which he sustained as well by occasion of the detention of that debt as for his costs and charges by him about his suit in that behalf expended, whereof the said defendant is convict, as appears to us of record. And have you that money before our judges at Pittsburgh, at our district court, there to be held for the county aforesaid the fourth Monday of January next, to render to the said plaintiff the debt, interest, and costs, and charges aforesaid.

And have you then there this writ.

Witness the Hon. Moses Hampton, president of our said court, at Pittsburgh, the 22d day of December, in the year of our Lord one thousand eight hundred and sixty.

(Signed) D. ARMSTRONG, *Prothonotary.*

580 (Indorsed:) No. 84, January, 1861. James M. Smith vs. James May. Al. fi. fa., No. 24. Nov. 1860. Debt $1,127 36. Int. from July 31, 1860:

Att'y	$4 00
Pro. A	2 91
Sh'ff G	6 19

Levy made on real estate, Dec. 26, 1860. Inquisition & condemnation, December 27, 1860, per schedules annexed. So answers—

JAMES L. GRAHAM, *Sh'ff.*

Shannon.

Execution docket entry.

Shannon.

JAMES M. SMITH
vs.
JAMES MAY.

Vend. ex. No. 84, Jan'y, 1860. Debt, $1,127 36. Int. fr. July 31, 1860.

Att'y	$4 00
Pro. A	3 75
Shff. G	6 19
" "	26 50
" "	1 12

581 I do certify that by virtue of this writ and vend. ex. No. 224, Apr. T., 1861, to me directed, after due public & timely notice by me given, according to law, of the time and place of sale, I did not, Monday, the 22d day of April, A. D. 1861, at 10 o'clock a. m., at the court-house, in the city of Pittsburg, expose the premises within described to sale by public vendue or outcry, and then adjourned the sale of the same until Saturday, the 27th instant, at 10 o'clock a. m., then sold the same to the Alleghenny Bank for the sum of $1,400, of which sum I have applied to the payment of costs on this writ, $41 56, and the balance, $1,358 44, I have paid into court, May 13th, 1861.

Mitchell & Palmer moves the court for leave to take out of court the sum of $1,077 50, amount due the Exchange Bank of Pa.

And now, to wit, May 25, 1861, it is ordered that the fund in court be applied by the proth'y, first to the payment of the grading tax of the city of Pittsburgh, Pa., amounting to $23 73, if interest, if any due thereon. 2d, to the debt, interest, and costs due on the judgement in favor of the Exchange Bank, (vend. ex. No. 224, Ap'l T., 1861,) No. 163, July T., 1859. 3d, to the debt, interest, and costs due on judg't in favor of the Allegheny Bank, No. 182, July T., 1860, and that proth'y pay out such fund to the parties entitled thereto, in accordance with said appropriation, upon their receipting for the same.

MAY 27TH, 1861.—Received from Pro. Armstrong, check No. 297, on the Allegheny Bank, the sum of ten hundred & seventy & seven $\frac{50}{100}$ dollars, ($1,077 50,) & being in full of balance of debt, interest, and costs of said judgement.

(Signed) MITCHELL & PALMER,
Att'ys for Pl'ff.

582 THE ALLEGHENY BANK *vs.* JAMES MAY. } No. 182, July term, 1860.

MARCH 30TH, 1861.—Judgement in favor of the plaintiff for $2,184 75.

MAY 27, 1861.—Rec'd of Pro. Armstrong, check No. 298, on the Allegheny Bank, for the sum of two hundred & twenty-five $\frac{61}{100}$ dollars, ($225 61,) being applicable to their judgement, by order of court in No. 224, April, 1861, vend. ex.

(Signed) H. HEPBURN & CO.,
Att'y for Pl'ff.

ALLEGHENNY COUNTY, *ss:*

[SEAL.] The Commonwealth of Pennsylvania to the sheriff of Alleghenny County, greeting:

We command you that of the lands and tenements, to wit, all the right, title, interest, & claim of defendant & James May, of, in, and to all that certain lot or piece of ground situated in the First Ward of the city of Pittsburgh, bounded and described sa follows, to wit: Beginning on Front street, at the corner of lot now or formerly belonging to the heirs of C. Magee, deceased, and running back on line of said lot eighty

feet, more or less, to lot now or lately belonging to John Ackins; thence eastwardly along the line of said lot forty feet; thence southwardly or parallel with said Magee's lot eighty feet to Front street; thence along Front street forty feet to the place of beginning, being parts of lots No. 241 & 242, in Col. Wood's plan, upon which is erected a three-story brick dwelling, carriage-house & stable, bake-house, &c., which you took, and which remains in your hands for want of buyers, as you returned to our judges at Pittsburgh, you expose to sale, and the money thereof, amounting to eleven hundred and twenty-seven $\frac{36}{100}$ dollars of debt, besides interest and costs, as hereon endorsed, lawful
583 money of Pennsylvania, you have before our judges at Pittsburgh, at our district court there to be held for the county aforesaid, the 4th of Monday of April next, to render to James M. Smith for his debt, interest, & costs and charges by him about his suit in that behalf expended, whereof the said James May convict, as appears of record, &c. And have you there this writ.

Witness the Hon. Moses Hampton, president of our said court, at Pittsburgh, this 31st day of January, anno Domini 18 .

(Signed) D. ARMSTRONG, *Prothonotary.*

COMMONWEALTH OF PENNSYLVANIA, *Allegheny County, ss:*

[SEAL.] I, Daniel Armstrong, prothonotary of the district court for said county, certify that the foregoing is a full and correct copy of the whole record of the case therein stated, wherein James M. Smith is plaintiff, and James May is defendant, as the same remains of record before the said court at No. 736, of July term, A. D. 1861.

In testimony whereof I have hereunto set my hand and affixed the seal of said court the 27th day of Jan'y, A. D. 1861.

(Signed) DANIEL ARMSTRONG, *Prothonotary.*

ALLEGHENNY COUNTY, *ss:*

I, Moses Hampton, president judge of the district court of said county, certify that Daniel Armstrong, by whom the above attestation was made, was, at the date thereof, prothonotary of said court, duly qualified, and the said attestation is in due form of law, and made by the proper officer.

Witness my hand and seal the 27th day of July, A. D. 1861.

(Signed) M. HAMPTON. [L. S.]

584 ALLEGHENNY COUNTY, *ss:*

[SEAL.] I, Daniel Armstrong, prothonotary of the district court in and for said county, certify that Hon. Moses Hampton, esq., by whom the above certificate was given, and whose name is thereto subscribed in his own proper handwriting, was, at the date thereof, president judge of the said court, duly commissioned and sworn, and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court the 27th day of July, A. D. 1861.

(Signed) DANIEL ARMSTRONG, *Proth'y.*

In Scott district court.

JAMES M. SMITH *vs.* JAMES MAY. } State of Iowa, county of Scott, Dec. term, 1861.

To said court:

Your petitioner, James M. Smith, claims of the defendant, James

May, the sum of $1,127 36, and int. at 6% from July 31st, 1860, as money justly due to him from said defendant; and for cause shows that heretofore, to wit, at the July term, 1860, of the district court of the Commonwealth of Pennsylvania, in & for the county of Allegheny, to wit, on the 31st day of July, 1860, your petitioner recovered a judgement by the consideration of said court against the said def't, James May, in a suit therein depending, wherein the said James M. Smith was plaintiff, & the said James May was defendant, for the sum of ($1,127 36) eleven hundred and twenty-seven $\frac{36}{100}$ dollars; a copy of the record
585 and of the proceedings of said court in that behalf is hereto annexed and made part of this petition, designated as Exhibit "A;" that the said judgement is still the property of your petitioner, & wholly unsatisfied and unpaid. Wherefore he prays judgement for said sum, interest, and costs.

(Signed) DOW & BROWN, *Pl'ff's Att'ys.*

COMMONWEALTH OF PENNSYLVANIA, *County of* ss:

I, James M. Smith, of said county, being duly sworn, do depose and say that I am the pl'ff in the above-entitled action; that I have heard read the foregoing petition therein; and that the same and the statements thereof are true.

Sworn to by James M. Smith, before me, and by him subscribed, in my presence, this day of September, 1861.

COMMONWEALTH OF PENNSYLVANIA, *County of Allegheny*, ss:

I, Cornelius Scully, of said county, being duly sworn, do depose and say that I am attorney in fact and agent for the above-named plaintiff, James M. Smith; that I placed the said claim vs. James May in suit; that I have heard read the foregoing petition; that the said claim is just and true, and the statements in the petition are true; but that about the 25th day of January, 1861, the said May paid on ac-
586 count of said judgement one hundred dollars, ($100,) as this affiant has heard and believes.

(Signed) CORNELIUS SCULLY.

Sworn to by said Cornelius Scully, as att'y in fact and agent of said James M. Smith, before me, and by him subscribed in my presence, this 14th day of September, 1861.

(Signed) D. ARMSTRONG, *Pro.*

ALLEGHENY COUNTY, ss:

I, M. Hampton, president judge of the district court for said county, certify that D. Armstrong, by whom the above attestation was made, was, at the date thereof, prothonotary of said court, duly qualified; and the said attestation is in due form of law and made by the proper officer.

Witness my hand and seal the 14th day of September, A. D. 1861.

(Signed) M. HAMPTON. [L. S.]

ALLEGHENY COUNTY, ss:

[SEAL.] I, D. Armstrong, prothonotary of the district court for said county, do hereby certify that Hon. M. Hampton, esq., by whom the above certificate was given, & whose name is thereto subscribed in his own proper handwiting, was, at the date thereof, president judge of the said court, duly commissioned and sworn and acting.

In witness whereof I have hereunto set my hand and affixed the seal of said court the 14th day of September, A. D. 1861.

(Signed) D. ARMSTRONG, *Pro.*

587 Then afterwards there was filed with the clerk of the district court for Scott County, State of Iowa, the original notice, in words and figures as follows, to wit:

In the district court.

STATE OF IOWA, *County of Scott, ss:*

JAMES M. SMITH *vs.* JAMES MAY. } Original notice.

To said defendants:

You are hereby notified that there is now on file in the office of the clerk of the district court of said county a petition of James M. Smith, claiming of you the sum of $1,127 36/100 & int., at 6 %, from July 31st, 1860, as money due upon a judgment in favor of pl'ff, & against you, rendered in the district court of Alleghany County, Penn'a, July 31st, 1860, for said sum, for the particulars of which you are referred to said petition.

And unless you appear thereto & defend, on or before noon of the second day of the next term of said court, to be begun & holden on the first Monday of December, A. D. 1861, default will be entered against you, & judgment rendered thereon for the amount herein claimed, with interest & costs.

DOW & BROWN,
Pl'ff's Attorneys.

Upon which is the following endorsement:

Served the within notice this 12th day of October, A. D. 1861, by reading it to the defendant, James May, in the city of Davenport, Scott Co., Iowa, & by delivering to him a copy thereof.

(Signed) JAMES THORINGTON, *Sh'ff,*
By JNO. M. LYTER, *Dep'ty.*

Fees, 80 cts.

587 (Indorsed:) Jas. M. Smith vs. Jas. May. Notice.

588 Then afterwards, to wit, on the 5th day of December, A. D. 1861, there was made the record entry in words and figures:

JAMES M. SMITH *vs.* JAMES MAY. } 6748.

Now, this cause coming on to be heard, the plaintiff appearing by Dow & Brown, his attorneys, and the court having inspected the record and found that the defendant, James May, has been duly and personally served with process; and the defendant having been three times solemnly called in open court, come not, but makes default herein, which is ordered to be entered of record; and the court having inspected the proofs offered by the plaintiff, and it appearing to the court that the defendant is indebted to the plaintiff in the sum of ($1,207 55,) twelve hundred and seven 55/100 dollars, upon a judgement duly rendered in favor of the plaintiff, and against the said defendant, in and by the district court of Allegheny County, Commonwealth of Pennsylvania, as

appears from an exemplication of the records of said court, now here presented in open court:

It is therefore ordered and adjudged by the court, that the plaintiff have and recover of the said defendant, James May, the said sum of $\$1,207\frac{55}{100}$, & costs of suit, taxed at $\$12\ \frac{30}{100}$, and have execution therefor.

589 Then afterwards, to wit, on the 13th day of December, A. D. 1861, there was issued out of the office of the clerk of the district court in & for said county an execution in words & figures as follows, to wit:

STATE OF IOWA, *Scott County, ss:*

The State of Iowa to the sheriff of Scott County, greeting:

We command you that of the goods, chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of James May, found in your county, or so much thereof as may be found necessary, as well as of any property you may have in your possession taken by a writ of attachment lately directed to you by us, issued at the suit of the plaintiff hereafter mentioned, you cause to be made, in conformity with the statute in such case made and provided, the sum of twelve hundred eighteen $\frac{35}{100}$ dollars, ($1,219 85,) amount due, including debt, interest, and costs, with interest thereon, at the rate of six per cent. per annum, on a certain judgement recovered in our district court of Scott County, on the 5th day of December, A. D. 1861, at the court-house in the city of Davenport and county of Scott aforesaid, wherein James M. Smith is plaintiff, and James May is defendant, which he sustained by reason of the non-performance of certain promises and undertakings made by the said defendant and adjudged to the said plaintiff in our said court, for the damages and costs in said suit in this behalf expended, whereof the said defendant is convicted, as appears to us of record. And have you that money before us within seventy days,

590 to render to those who may be legally entitled thereto, with a return of your acts and doings in the premises hereon endorsed or annexed; and hereof fail not at your peril.

Witness Ira M. Gifford, clerk of the district court of Scott County, and the seal of said court, affixed at office in the city of Davenport, in said county this the 13th day of December, A. D. 1861.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk District Court, Scott County, Iowa,
Per HENRY JENSON, *Deputy.*

Upon which is the following endorsement:

By virtue of this writ of execution, and in pursuance thereof, I have this 23d day of December, A. D. 1861, attached George Hager as garnishee, by reading to and leaving with him a garnishee notice, a copy whereof I have hereunto annexed and made a part of this return.

(Signed) JAMES THORINGTON, *Sh'ff,*
By C. H. LAGE, *Dep.*

Fees, 1 40.

To which is annexed the following garnishee notice, in words and figures as follows, to wit:

In the district court.

STATE OF IOWA, *County of Scott, ss:*

JAMES M. SMITH *vs.* JAMES MAY. } Notice of garnishment.

591 The State of Iowa to George Hager:

You and each of you are hereby notified that on the 5th day of December, A. D. 1861, the above-named plaintiff recovered a judgement against the above-named defendant for the sum of 1,219 dollars & 85 cents, debt and costs, in the above-named court; that on the 13th day of December, A. D. 1861, an execution was issued out of said court to enforce the payment of said judgement, together with the interest thereon at the rate of 6 per cent. per annum from the day of the rendition threof. This, therefore, is to notify and inform you that by virtue of said execution to me issued, directed, and delivered, and by force of the statute in such case made and provided, you are attached and held as garnishee as a debtor, and as a person holding property of said defendant, and that you are required not to pay any debt due by you to said defendant, James May, or hereafter to become due. And that you must retain possession of all property, goods, chattels, rights, moneys, credits, or effects of said defendant, now or hereafter being in your custody or under your control, in order that the same may be dealt with according to law. You are also required to appear on the said first day of the next term of the district court in and for said county, to wit, on the 3d day of February, A. D. 1862, and answer such interrogatories as may be then propounded to you, or you may be liable to pay the entire judgement as aforesaid, and the costs of this proceedings.

Given under my hand this 23d day of December, A. D. 1861.

(Signed) JAMES THORINGTON,
Sheriff of Scott County, Iowa,
By H. H. ANDRESEN, *Dep't.*

592 Then afterwards, to wit, on the 4th day of February, 1862, there was filed with the said clerk the answer of George Hager, garnishnee, in words and figures as follows, to wit:

JAMES M. SMITH *vs.* JAMES MAY. } Answer of George Hager, garnishee.

Int. 1st. Are you in any way indebted to the defendant, James May?

Answer. I do not know that I am indebted to James May; I gave him notes; I don't know where they are.

Int. 2d. State how many notes you gave him, what was the date of them, & when were they due. State the amount thereof.

I can't state how many; I gave him notes for $3,500; I bought property of him, amount of price was $4,000; I have paid about $1,500; I gave the notes Feb. 19th, 1857; that was date of notes; the notes were for $500 each, one payable every year with interest on all unpaid principal; there were interest notes, too; I paid $500 down, gave 7 notes for $500 each for balance, and have taken up one of the $500 [dollar] notes, the first one that fell due; since the garnishment I met him (May) on the street and asked him about it, & he said he haden't time to attend

to it; within the last year I have been at him to get the matter settled; I mean the matter of the plat or damages, and he said the last time
593 I saw him, "I will get that property back and fix it;" he didn't claim that any one else held the notes, nor did he claim that in our last conversation since the garnishment nothing was said about the notes.

Int. 4th. Where did you last see the notes, and who did you hand them to?

Ans. When I signed them, I saw them last; I don't know who took them; I believe May took 'em.

Int. 5th. To whom did you pay the note you took up?

Ans. I paid it to May.

Int. 6th. Has any one ever spoken to you about the notes or asked you for payment except May, or has any one ever claimed to you to hold them except May?

Ans. No one has spoken to me about notes, except May asked me for money; no one has ever asked me for payment but May; I wouldn't answer that because I don't know who holds them.

Int. 7th. Did any man or woman ever come to you and claim to own the notes, or say anything about holding them?

Ans. No. I wish to state here that I have a defence against the notes and against the trust deed given to secure them; my defence is that the plat (hereto annexed) I bought forty feet here on 3d street, running north to a forty-feet street as described in May's deed to me,
594 except an alley which is not mentioned in deed; deed is recorded in book "C" of town lots, page 557; my defence is that he has not fulfilled his contract, so I think I am not bound to fulfil mine without he gives me damage what is right; he may take his property & pay in my damage for my building, because he has not fulfilled his contract yet; if he does that, it is all I want. I wish to add to my answer to 2d int. the following: that I don't owe him anything, except I gave him notes, & I don't where they are.

(Signed) GEORGE HAGER.

Sworn to by George Hager, before me and in my presence, this 3d day of Feb., 1862, thus subscribed.

[SEAL.] (Signed) JAMES ARMSTRONG,
Notary Public, Scott Co., Iowa.

Then afterwards, to wit, on the 4th day of February, 1862, there was filed with the clerk of said court the reply in words and figures as follows, to wit:

JAMES M. SMITH
vs.
JAMES MAY—GEORGE HAGER, GARNISHEE. } Reply.

The plaintiff replies to the answer of the garnishee, and says
595 that he is indebted to [to] the def't, James May, in the sum of $2,000; that said May holds the notes given by said Hager; that $2,000 thereof, principal and interest, were past due at the time of garnishment, and were held by the def't, May, and is endosed by him, were transferred without consideration, and after maturity, that no defence exists against said notes. Pl'ff denies each and every allegation of the garnishee's answer setting forth a defence. Prays judgement.

(Signed) DOW & BROWN, *for Pl'ff.*

STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full, true, and complete transcript of the papers on file and the record entry in the above case wherein James M. Smith is plaintiff, and James May is defendant.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed, at office, in the city of Davenport in said county, this 14th day of April, A. D. 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

[5-cent U. S. revenue stamp: I. M. G., Apr. 14, '63.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 14th day of April, A. D. 1863.

(Signed) JNO. F. DILLON,
Judge 7th Judicial District.

[5-cent U. S. revenue stamp: J. F. D., Apr. 14, 1863.]

596 (Indorsed:) No. 25, eq. U. S. Circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'rs of A. Le Claire & als. Defendants' exhibit.

Filed Oct. 22, '63.
(Signed) W. G. WOODWARD,
Clerk C. C. U. S.

597 No. 4.—*Barret vs. May.*

EXHIBIT NO. 4.

(Indorsed:) Filed Oct. 22, 1863.

WILLIAM BARRET } 3880.
vs.
JAMES MAY. }

Index.

Page 2. Petition.
" 6. Demurrer on petition.
" 7. Record entry.
" 8. Do. do.
" 8. Amended petition.
" 11. Record entry.
" 12. Do. do.
" 12. Execution.
" 14. Clerk's certificate.

Transcript fees, $5,00.

598 STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court holden in and for said county in the city of Davenport therein, on the seventh day

of August, A. D. 1861, was present the Hon. John F. Dillon, sole presiding judge; James Thorington, sheriff of said county; and Ira M. Gifford, clerk of said court; when the following, among other, proceedings were had, to wit:

WILLIAM BARNETT } 3860.
vs.
JAMES MAY. }

Be it remembered that heretofore, to wit, on the 13th day of January, A. D. 1859, there was filed in the office of the clerk of the district court of Scott County a petition, which is in the words and figures following, to wit:

THE STATE OF IOWA, *Scott County, ss:*

In and to the district court of said Scott County, your petitioner, William Barnet, claims of the defendant James May, George Schibel, and James Lindsay the sum of three thousand dollars, and for cause of such claim says that on or about the 27th day of May, A. D. 1857, said defendant executed to Austin Corbin, John Dalzell, George L. Nichols, & William Barnett, a certain bond, of which the following is a copy:

599 "Know all men by these presents that we, James May, George Schibel, [and] are held and firmly bound unto Austin Corbin, John Dalzell, George L. Nichols, William Barnett, in the penal sum of three thousand dollars, to be levied of our goods & chattels, lands and tenements, in default of payment.

"The condition of the above obligation is such, that whereas James May has sued out a writ of injunction against said Corbin, Dalzell, Nichols, & Barnet, which is now pending in the district court of Scott County, Iowa, and under which the judge of said dist. court has ordered the sum of the surety at three thousand dolllars; now, if the said James May shall pay all the damages and costs which may accrue on said action to said Corbin and others, then the obligation to be void; otherwise to remain in full force and virtue in law.

(Signed) "JAMES MAY.
"GEORGE SCHIBEL.
"JAMES LINDSAY."

Upon which is endorsed as follows:

"STATE OF IOWA, *Scott County, ss:*

"I, George Schibel, of Scott County, and I solemnly swear that I am worth property in my own right in the State of Iowa, to the amount of about three thousand dollars.

(Signed) "GEORGE SCHIBEL."

And further endorsed:

"For a valuable consideration we do hereby sell, assign, and transfer unto William Barnet all our right, title, and interest in and to the foregoing bond in which we are obligers.

"Davenport, Jan'y 13th, 1859.

(Signed) "AUSTIN CORBIN.
" "JOHN DALZELL.
" "GEORGE L. NICHOLS."

600 That by said assignment all of the right and title to said bond became and still is in your petitioner, who is the sole and only owner thereof.

Petitioner says that said May, on the 23do day of May, A. D. 1857, filed his petition in the Scott County district court, apart the process mentioned in said bond praying certain relief, among other that said parties shall be restrained and enjoined from selling, conveying, or in any wise encumbering the premises mentioned in said bill, to wit, the following: The north one-half of block number twenty (20) in the city of Davenport.

That in accordance with the prayer of petitioner in said bill an injunction writ issued out of the office of the clerk of said court directed to said petitioner, by which he was restrained and enjoined from selling said premises, and as ordered by the court, said defendant filed the bond conditioned for the payment of any damages and costs which said obligees might sustain, by reason of the issuing of said writ, which land is hereinbefore recited.

That at the time of the filing of said bill and the issuing of said writ, your petitioner was the owner of said premises; that the same was worth at the time twenty thousand dollars; that he has negotiated a sale thereof at that rate, and could have realized therefor the said sum of twenty thousand dollars; that the sum at which the same was worth and for which said petitioner had negotiated a sale; that the premises are fut no [no] more than fifteen thousand dollars, and now cannot be sold for more than ten thousand dollars; that by sale of said premises on the part of the said May, petti. was bound and prevented from
601 selling said premises and are pm armd did sustain damages to the am't of three thousand dollars, and made wholly by reason of the issuing of said injunction, and the preventing of petitioner from taking said premises, to cover which the said bond was made, and that sum he claims as damages in the said proceedings and to secure to which plaintiff said bond as given and endorsed.

Further says the plaintiff that said defendants are upon said bond did the to them f'r this case, that the value of said land at the time of the issuing of said bill was twenty thousand dollars; that upon that sum plaintiff is entitled, to wit, at the rate of six per cent. for the same, of the parties of said bill the making of said bond, and the issuing of said writ, because that by the defendant's act in the premises, he was hindered and prevented from taking or using of said premises or realizing anything therefor, and that the plaintiff has thus sustained damages in this behalf in the sum of the interest upon the value of said land and he used which the bond was nul.

Further, that previous to the issuing of said writ of injunction, the said obligers in said bond were put to trouble and expense in and that the defence therefor, that they are issued to appear & defend the same and did, and this were pmt by certain expense cetn May's as att'ys' fees, to wit, each of said obligers the sum of fifty dollars erally in all the sum of ten hundred dollars, which said last-mentioned sum the plaintiff claims of the defendant as damages to him, the payment of which said bond was made and entered; that said obligers being as aforesaid frm to defend said suit as alleged, to employ att'ys uvff in the uhtz and did, that the said att'ys further for f. will his br. & claim &
602 demur ap'rt said May earn the sum of fifty dollars, all of which claims are now the plaintiff's, as assigned to him, and all made May by the wet of said deponet, of which the suit is instituted, and is damage and costs which accrued to the said obliger by reason of the

issuing of said writ, and to secure the property which the said bond was made.

Plaintiff says that the condition of said bond is broken, that said defendants have not paid all or any of the damages and costs which accrued in said action, and which damages and costs are heretofore set out. We therefore claim the sum of the penalty therein named, to wit, the sum of three thousand dollars of and from the said defendants, with costs of this proceeding.

(Signed) CORBIN & DOW.

James May, George Scheible, James Lindsy, to W. Barrett.

For damage sustained by reason of his not being able to or p'r of the land mentioned	300 00
To int. on $20,000 from 27 May, A. D. 1857	
To att'ys fund ep'r sut	$200 00

Then afterwards, to wit, on the 27th day of January, 1859, there was filed with the clerk of said court the demurer to petition in words and figures as follows, to wit:

Demurer to petition.

Scott district court.

BARNETT *vs.* MAY.

603 The defendants demur to the plaintiff's petition for the following causes:

1. To so much of said petition as alleges that the plaintiff has sustained damages by reason of the loss of a sale of said lots of land and the depreciation in the price thereof. Because such damages are not reasonable in this action, being speculative, not real; that plaintiff does not ask that he has been deprived of the use of said property, and the rents and profits thereof.

2. The defendant denies to the claim of damages for interest on the money value of said premises for the same cause.

3. To that portion of the petition which alleges damages for the payment of attorney's fees, the defendant demurs, because the same do not constitute in law damages on said land.

4. To the whole petition the defendant demurs, because the plaintiff nowhere alleges and shows that any damages were adjudged to him in said bond, or the decree of the district court dissolving said injunction and dismissing the bill.

(Signed) GRANT, *for Def'ts.*

(Endorsed:) Copy waived 27 Jan'y, '59.

Then afterwards, to wit, on the 3d day of December, 1859, there was made the record entry in words and figures as follows, to wit:

WILLIAM BARNET *vs.* JAS. MAY. 3880.

This day this cause come on to be heard, and, on motion, defendant is ruled to answer in 20 days.

604 Then afterwards, to wit, on the 14th of December, 1860, there was made the record entry in words and figures as follows, to wit:

WM. BARNET vs. JAMES MAY. } 3880.

This day, this cause coming on to be heard, defendant's demurer to petition sustained as 1, 2, & 3, causes of demurer, overruled as to the 4th cause.

Then afterwards there was filed an amended petition in words and figures as follows, to wit:

State of Iowa, Scott County, in and for the district court of said Scott County.

Your petitioner, Wm. Barnet, claims of the defendant, James May, George Scheibel, and James Lindsay, the sum of three thousand dollars, and for cause of such claim says that on or about the 27th day of May, A. D. 1857, said defendants executed to Austin Corbin, John Dalzell, George L. Nichols, & William Barnet a certain bond, of which the following is a copy:

(See bond & endorsements thereon, on page 2.)

That by said assignment all of the rights & title to said bond became and still is in your petitioner, who is the lawful owner and holder thereof.

And the plaintiff further avers that on the 23d day of May, 1857, said def't, James May, filed his petition in the Scott district court against the persons named in said bond, praying certain relief, among other things, that the said parties def't therein might be restrained &

605 enjoined from selling, conveying, or in any way encumbering the premises mentioned in the bill of complaint of said May, to wit, the following described land in Scott County, Iowa, the north half of block No. 20 in the city of Davenport; that pursuant to the prayer of said bill, a writ of injunction was issued out of the office of the clerk of said court, directed to the def'ts therein, whereby they were restrained and enjoined from selling said premises, & that, as required by said order of said court, the said defendants made, executed, and delivered to the said def'ts therein the said bond conditioned for the payment of any damages & costs which the def'ts herein might sustain by reason of the wrongful sueing out of said writ, which said bond is hereinbefore recited; that, at the time of filing said bill and the issuing of said writ, your petitioner was the owner of said premises; that said property was worth, at the time of the issuing & service of said writ of injunction, the sum of $15,000; that prior to said day, to wit, on the 10th day of May, 1857, the plaintiff, being then the owner of said land in fee as aforesaid, did contract and agree, & with one Hyde, to sell and convey said premises to said Hyde in three months from said time, and that within said period said Hyde purchased said land at and for the price of $20,000; that said Hyde was then, and for three months after the service of said injunction, ready and willing & desirous to perfect said purchase; that the price was to be paid as follows, $5,000 in cash down at the delivery of the deed then and there to be executed, & the balance of said money to be secured by mortgage on the land aforesaid & other lands in said county and State, & that the papers and

notes were made out ready to be delivered when the said writ was
606 issued & served; that said James May had full knowledge and notice of said contract of sale, the price and the value of said land, & filed his bill, procured said writ for the express purpose of enjoining said sale and preventing the execution of said contract; that, after the expiration of said three months from the service of said writ, during all which time, and for a long time thereafter, the pl't'ff was restrained and enjoined thereby from executing said contract, said Hyde refused to perform his part of said contract for the reason that the pl't'ff had not performed within the time agreed upon; that afterwards said bill of said May was dismissed, and the said writ of injunction dissolved, as appears from the records of this court, in case No. 1515, (Feb. term, 1858,) by the final judgement of this court.

And the plaintiff further avers that this pl'ff was so restrained as aforesaid for one year from selling said premises, during which time they depreciated in value, and became worth only $5,000.

And the plaintiff further avers that, by reason of the service and issuing of said writ of injunction, the defendants therein and obligees in said bond were put to great cost and expense in and about defending against said writ and procuring the dissolution thereof, and were obliged to retain attorneys of this court to defend against & procure the dissolution of said writ, at an expense to the pl'ff and his assignees of the sum of $200; that the condition of said bond is broken; that said defendant has not paid the damages and costs, nor any part thereof. Pl'ff, therefore, prays judgement for the sum claimed, and interest & costs of this suit.

(Signed) CORBIN, DOW & BROWN,
Pl'ff's Att'ys.

607 Upon which is the following endorsement:

In Scott dist. court. William Barnet vs. James May et al. Amended petition.

To PARKER & EDWARDS:

You will take notice that this action is discontinued, except as against James May, and thereof the within is an amended petition therein.

May 16, '61.

(Signed) C., D. & B.

Service admitted May 16, '61.

(Signed) P. & EDWARDS, *Def'ts' Att'ys.*

Then afterwards, to wit, on the 6th day of June, 1861, there was made the record entry of words and figures as follows, to wit:

WM. BARNETT
vs. } 3880.
JAMES MAY.

This day this cause came on to be heard, and, on motion, it is ordered that the same be dismissed as to James Lindsay, surety on the bond.

608 Then afterwards, to wit, on the 7th day of August, A. D. 1861, there was made the record entry in words and figures as follows, to wit:

WM. BARNETT } 3880.
vs.
JAMES MAY. }

This day this cause came on to be heard, the plaintiff appearing by Davison & True, his attorneys, and the defendant by Grant & Parker & Edwards, his attorneys, and, neither party demanding a jury, trial is had to the court, and the court, having heard the evidence, and being fully advised in the premises, doth find that the plaintiff, Wm. Barnet, is entitled to recover from said defendant, James May, the sum of twenty-five dollars, ($25 00.) It is, therefore, ordered and adjudged by the court that plaintiff, Wm. Barnet, have and recover of and from said defendant, James May, the sum of twenty-five dollars damages, with interest thereon at the rate of six per cent. per annum, together with the costs in this behalf expended, taxed at $4 25, & that he have execution therefor.

Then afterwards, to wit, on the 6th day of September, 1861, there was issued an execution in words and figures as follows, to wit:

STATE OF IOWA, *Scott County:*

The State of Iowa to the sheriff of Scott, greeting:

609 We command you that of the goods and chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of James May, found in your county, or so much thereof as may be found necessary, as well as any property you may have in your possession, taken by a writ of attachment lately directed to you by us, issued at the suit of the plaintiff hereafter mentioned, you cause to be made, in conformity with the statute in such case made and provided, the sum of twenty-nine $\frac{95}{100}$ dollars, ($29 95,) amount due, including debt, interest, and costs, with interest thereon at the rate of 6 per cent. per annum, on a certain judgement recovered in our district court of Scott County, on the 7th day August, A. D. 1861, at the court-house in the city of Davenport, & county of Scott aforesaid, wherein Wm. Barnet is plaintiff, and James May is defendant, which he sustained by reason of the non-performance of certain promises and undertakings made by the said defendant, and adjudged to the said plaintiff in our said court, for the damages and costs in said suit in this behalf expended, whereof the said defendant is convicted as appears to us of record. And have you that money before us within seventy days, to render to those who may be legally entitled thereto, with a return of your acts and doings in the premises hereon endorsed or annexed, and hereof fail not at your peril.

Witness Ira M. Gifford, clerk of the district court of Scott County, and the seal of said court affixed, at office in the city of Davenport, in said county, this the 6th day of September, A. D. 1861.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of District Court, Scott County, Iowa.

610 Upon which is the following endorsements:

No property found in my county upon which to levy this execution.

(Signed) JAMES THORINGTON, *Sh'ff*,
By JNO. M. LYTER, *D'p't.*

Mileage to Le Claire see Tallmage as directed, $1 50.

STATE OF IOWA, *Scott County:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full and complete transcript of the papers found on file in my office and of the record entries as the same appear on record, and the execution and return of the same in the case wherein William Barnett is plaintiff and James May is defendant.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at office in the city of Davenport, in said county, this 17th day of April, 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

[U. S., I. M. G., 5-cts. revenue stamp: April 17, '63.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford, is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 17th day of April, A. D. 1863.

(Signed) JNO. F. DILLON,
Judge 7th Judicial District.

[U. S., J. F. D., 5-cts. revenue stamp: April 17, '63.]

611 (Indorsed:) 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'rs of A. Le Claire & als. Def'ts' exhibit.

Filed Oct. 22, '63.
(Signed) W. G. WOODWARD,
Clerk C. C. U. S.

612 No. 5.—*Whittemore & Sons vs. May.*

Indorsed: Filed Oct. 22, 1863.

WHITTEMORE & SONS
vs.
JAMES MAY.

Index.

Page 2. Petition.
" 3. Original notice.
" 4. Note.
" 5. Record entry.
" 6. Execution.
" 7. Pluries execution.
" 9. Sheriff's sale.
" 10. " return.
" 13. Clerk's certificate.

Transcript fees, $4 25.

613 STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court holden in

and for said county, in the city of Davenport therein, on the fifteenth day of October, A. D. 1857, was present the Honorable Asahel H. Bennett, sole presiding judge; Harvey Leonard, sheriff of said county; and Joshua D. Patton, clerk of said court; when the following, among other, proceedings were had, to wit:

D. WHITTIMORE & SONS
vs.
JAMES MAY. } Petition at law.

Be it remembered that heretofore, to wit, on 18th day of August, A. D. 1857, there was filed in the office of the clerk of the district court of Scott County, a petition in the words and figures following, to wit:

"EXHIBIT A."

$2,420. DAVENPORT, *December 24th*, 1856.

Six months after date I promise to pay to the order of D. Whittemore & Sons two thousand four hundred and twenty dollars at the banking-house of McGregor, Lawes & Blakemore. Value received.

(Signed) JAMES MAY.

STATE OF IOWA, *Scott County, ss:*

In district court of Scott County, State of Iowa, for October term, A. D. 1857.

D. WHITTEMORE & SONS
vs.
JAMES MAY.

To the said district court:

Your petitioners, D. Whittemore & Sons, claim of the defend-
614 ant, James May, the sum of two thousand & four hundred & sixty-one dollars, as justly due them from said defendant.

For cause of such claim petitioners state that heretofore, to wit, on the 24th day of December, A. D. 1856, at the city of Davenport in the county aforesaid, the said defendant, for value received, executed & delivered to your petitioner a certain promissory note of that date, whereof the defendant promised to pay your petitioners, six months after the date of said note, the sum of two thousand and four hundred and twenty dollars, at the banking-house of McGregor, Lawes & Blakemore, a copy of which said note is attached hereunto, marked "Exhibit A," and made a part of this petition. Petitioners state that said note is still their property, and is due and wholly unpaid.

Wherefore your petitioners pray judgement for the amount claimed, with interest and costs.

(Signed) DAVISON & TRUE,
Attorneys for Pl'ffs

Then afterwards there was filed with the clerk of said court the original notice, in words and figures as follows, to wit:

The State of Iowa, Scott County, to James May:

SIR: You are hereby notified that there is now on file in the office of the clerk of the district court of Scott County, in the State of Iowa, a

petition of D. Whittimore & Sons, claiming of you the sum of two thousand four hundred and sixty-one dollars, ($2,461,) as justly due them from you, and for cause they state that on the 24th day of December, A. D. 1856, you executed to them a promissory note of that date
615 whereby you promised to pay them six months thereafter at the banking-house of McGregor, Lawes & Blakemore, the sum of two thousand four hundred and twenty dollars, for value received; that said note is still the property of petioners, and is due and wholly unpaid—a copy of said note is attached to the petition—and unless you appear and answer or demur to said petition on or before the first day of the next term of the district court of said county, to be begun and holden on the first Monday in October, A. D. 1857, judgement will be rendered against you thereon.

(Signed) DAVISON & TRUE,
Attorneys for Pl'ff.

Upon which appears the following endorsements:

Rec'd this notice August 18th, 1857.
(Signed) H. LEONARD, *Sh'ff.*

I hereby certify that I have served this notice by leaving a copy of the same at the usual place of residence of said defendant with James May, jr., his son, he being over the age of 14 years, and member of defendant's family. No copy of the original petition demanded.

(Signed) H. LEONARD,
Sh'ff of Scott Co., Iowa,
Per LEVI DURBIN, *Deputy.*

Fees, 85 cts.

Then afterwards there was filed with the clerk of said court the note, in words and figures as follows:

$2,420. DAVENPORT, *December 24th*, 1856.

Six months after date I promise to pay to the order of D.
616 Whittimore & Sons, two thousand four hundred and twenty dollars, at the banking-house of McGregor, Lawes & Blakemore. Value received.

No. (Signed) JAMES MAY.

Due June 24th, '57.

Then afterwards, to wit, on the 15th day of October, A. D. 1857, there was made the "record entry" in book vol. 4, page 330, in words and figures as follows, to wit:

D. WHITTIMORE & SONS
vs.
JAMES MAY. } 1584.—Judgement on note.

This cause came on to be heard, and the plaintiffs appears by Davison & True, their attorneys, and the defendant, though duly served with process, and being three times solemnly called in open court, comes not, but makes default herein. And it appearing that the plaintiff's claim is founded on a money demand, the court order and the clerk does now assess and report the amount due thereon at $2,464 36. It is therefore

considered and adjudged by the court that the plaintiffs, D. Whittemore & Sons, do have and recover of the defendant, James May, the said sum of two thousand four hundred and sixty-four dollars and thirty-six cents, their damages, as well his costs herein, taxed at $6 35, and that execution issue therefor.

Then afterwards, to wit, on the 19th day of December, 1857, there was issued from the clerk's office of said court the execution, in words and figures as follows, to wit:

617 STATE OF IOWA, *Scott County:*

The State of Iowa to the sheriff of Scott County, greeting:

We command you that of the goods, chattels, stock or interest in any company, debts due him, property of his in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of James May, or so much thereof found in your county, you cause, in conformity with the statute in such case made and provided, to be made the sum of two thousand four hundred seventy dollars $\frac{71}{100}$, ($2,470 71,) amount due, including interest, debt, and costs, with interest thereon at the rate of six per cent. per annum from the 15th day of October, A. D. 1857, on a certain judgement recovered in our district court of Scott county on the 15th day of October, A. D. 1857, at the court-house in the city of Davenport therein, wherein D. Whittimore & Son are plaintiffs and James May is defendant, which pl'ff sustained by reason of the non-performance of certain promises and undertakings made by the said defendant, and adjudged to the said plaintiffs in our said court for their damages and costs in said suit in his behalf expended, wherefore the said defendant is convicted, as appears to us of record. And have you that money before us within seventy days to render to those who may be legally entitled thereto, with a return of your acts and doings in the premises hereon endorsed or annexed. And hereof fail not at your peril.

Witness Joshua D. Patton, clerk of the district court of Scott County, and the seal of said court affixed, at office in the city of Davenport, in said county, this the 19th day of December, A. D. 1857.

[SEAL.] (Signed) JOSHUA D. PATTON,
Clerk of District Court, Scott Co., Iowa,
By JOSEPH J. LANE, *Dep. Clerk.*

618 Upon which is endorsed as follows:

Mr. SHERIFF: You are directed to return this execution for renewal. Dated this 27th day of January, A. D. 1858.

(Signed) DAVISON & TRUE,
Pl'ff's Attorneys.

Then afterwards, to wit, on the 18th day of August, A. D. 1860, there was issued from the clerk's office of said court the pluries execution, in words and figures as follows, to wit:

STATE OF IOWA, *Scott County:*

The State of Iowa to the sheriff of Scott County, greeting:

We command you, as heretofore, that of the goods, chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of James May, found in your county, or so much thereof as may be

found necessary, as well as of any property you may have in your possession, taken by a writ of attachment lately directed to you, by us issued at the suit of the plaintiff hereafter mentioned, you cause to be made, in conformity with the statute in such case made and provided, the sum of twenty-four hundred and seventy & $\frac{71}{100}$ dollars, ($2,470 71,) amount due, including debt, interest, and costs, with interest thereon at the rate of 6 per cent. per annum, on a certain judgement recovered in our district court of Scott County on the 15th day of October, A. D. 1857, at the court-house in the city of Davenport, and county of Scott aforesaid, wherein D. Whittimore & Son are plaintiffs and James May is de-
619 fendant, which pl'ff sustained by reason of the non-performance of certain promises and undertakings made by the said defendant, and adjudged to the plaintiffs in our said court for the damages and costs in said suit in this behalf expended, whereof the said defendant is convicted, as appears to us of record. And have you that money before us within seventy days to render to those who may be legally entitled thereto, with a return of your acts and doings in the premises hereon endorsed or annexed. And hereof fail not at your peril.

Witness Ira M. Gifford, clerk of Scott County district court, and the seal of said court, affixed at office in the city of Davenport, in said county, this the 18th day of August, A. D. 1860.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of District Court, Scott County, Iowa.

Upon which appears the following endorsements:

Levied upon the following described real estate in Scott County, Iowa, as the property of James May, to wit: Beginning at the southeast corner of Le Claire's reserve, at the head of the Upper Rapids of the Mississippi River, on the bank of said river; thence following the survey of the original meander of the reserve up the said river north forty-six (46°) degrees east eight (8) chains; thence north (40°) forty degrees east nine $\frac{50}{100}$ chains to a stake, from whence a burr oak, 18 inches in diameter, bears north forty-two and a half degrees west one hundred and thirty-four (134) links to a burr oak 15 inches in diameter, bears south 75° degrees west one hundred and forty-three (143) links; thence
north sixty-five (65°) degrees west nine (9) chains to a stake and
620 stone, corner of Mr. Disney's land; thence south 25° degrees west five $\frac{50}{100}$ chains to a stake and stone, corner of Lambach's land; thence north eighty-three (83°) degrees west sixteen $\frac{20}{100}$ chains to the southwest corner of Lambach's land; thence north six $\frac{25}{100}$ chains to a stake and stones in town boundary line of Le Claire; thence west with said town line five (5) chains to southwest corner of the town of Le Claire; thence south twenty (20) chains to a stake & stone; thence east twenty (20) chains to the place of beginning.

Also on the following real estate, being in the city of Davenport, Scott Co., Iowa: lots Nos. one, (1,) two, (2,) west (30) thirty feet of three (3) in block twenty, (20,) and lots three (3) and six (6) in block thirteen (13.)

(Signed) JAMES THORINGTON, *Sheriff.*

Sheriff's sale.

In the district court of Scott Co., State of Iowa.

THE STATE OF IOWA, *Scott County:*

By virtue of an execution issued from the office of the clerk of the district court of Scott County, State of Iowa, in favor of D. Whitte-

more & Son, and against James May, dated the 18th day of August, A. D. 1860, and to me directed, commanding me that of the goods, chattels, stock or interest in any company, debts due, property in the hands of third persons, lands and tenements, (which are not exempt by law from execution,) of the said James May, I make or cause to be made the sum of twenty-four hundred and seventy dollars and seventy-one cents, with interest and costs, I levied upon the following described real estate in Scott County, Iowa, to wit: Beginning at the southeast corner of Le Claire's reserve, at the head of the Upper Rapids of the Mississippi River, on the bank of said river, thence following the survey of the original meander of the reserve up the said river north forty-six (46) degrees east eight (8) chains; thence north forty (40) degrees east nine 50-100 chains to a stake, from whence a burr-oak tree, eighteen (18) inches in diameter, bears north forty-two and a half degrees west one hundred and thirty-four (134) links, to a burr oak fifteen (15) inches in diameter, bears south seventy-five (75) degrees west one hundred and forty-three (143) links; thence north sixty-five (65) degrees west nine (9) chains to a stake and stone, corner of Mr. Dinsey's land; thence south twenty-five (25) degrees west five 50 100 chains to a stake and stone, corner of Lambach's land; thence north eighty-three (83) degrees west sixteen 20-100 chains to the southwest corner of Lambach's land; thence north six 25-100 chains to a stake and stone in town boundary line of Le Claire; thence west with said town line five (5) chains to the southwest corner of the town of Le Claire; thence south twenty (20) chains to a stake and stone; thence east twenty (20) chains to the place of beginning. Also on the following real estate, being in the city of Davenport, Scott County, Iowa, viz: Lots number one, (1,) two, (2,) and the west thirty (30) feet of three, (3,) in block No. twenty, (20,) and lots No. three (3) and six (6) in block No. thirteen, (13;) all taken as the property of James May.

And I hereby give public notice that I shall offer for sale at public outcry at the court-house, in the city of Davenport, county of Scott, and State aforesaid, on Saturday, the 29th day of September, 1860, at the hour of two o'clock p. m. of said day, to the highest and best bidder therefor in cash, the above-described property, or sufficient thereof to satisfy the above debt, with interest and costs.

Dated this 29th day of August, 1860.

JAMES THORINGTON,
Sheriff of Scott County, Iowa.

DAVISON & TRUE, *Pl'ff's Att'ys.*
aug 29–tds]

To said execution is attached the sheriff's return as follows:

621 By virtue of the within writ of execution, and in pursuance thereof, I have, this 29th day of August, 1860, levied upon the following described real estate lying and being situated in Scott County, Iowa, to wit: Beginning at the southeast corner of Le Claire's reserve at the head of the Upper Rapids of the Mississippi River, on the bank of said river, thence following the survey of the original meanders of the reserve up the said river north forty-six (46) degrees east eight (8) chains; thence north forty (40°) degrees east nine $\frac{50}{100}$ chains to a stake, from where a burr-oak tree, eighteen (18) inches in diameter, bears north forty-two and a half degrees west one hundred and thirty-four links to a burr-oak fifteen (15) inches in diameter, bears south seventy-five (75°) degrees west one hundred and forty-three (143) links; thence north sixty-five (65°) degrees west nine chains to a stake & stone, cor-

ner of Mr. Disney's land; thence south (25°) twenty-five degrees west five $\frac{50}{100}$ chains to a stake and stone, corner of Lambach's land; thence north eighty-three (83°) degrees west sixteen $\frac{20}{100}$ chains to the southwest corner of Lambach's land; thence north $6\frac{25}{100}$ chains to a stake and stone in town boundary line of Le Claire; thence west with said town line five (5) chains to the southwest corner of the town of Le Claire; thence south twenty (20) chains to a stake and stone; thence east twenty chains to the place of beginning. Also upon the following real estate in the city of Davenport, Scott Co., Iowa, to wit: Lots number one, (1,) two, (2,) and west thirty feet of three (3) in block number twenty, (20,) and lots number three (3) and six (6) in block number thirteen, (13;) all taken as the property of said James May.

622 And as a further return upon this writ of execution, I certify that on this 29th day of August, 1860, I advertised the same for sale at public outcry, at the court-house in the city of Davenport, in said Scott County, Iowa, on Saturday, the 29th day of September, 1860, at the hour of 2 o'clock p. m. of said day, by posting printed notices, giving the time and place of said sale as above designated, in three public places in said Scott County; one of said notices being posted at the door of the court-house of said Scott County, where the last district court was held in and for said county, to wit, in the city of Davenport, and one at the post office in said city of Davenport, and one of said notices being posted in a public place in Le Claire Township, in said county, wherein the said real estate is situated; and in accordance with the statute in such cases made and provided, I advertised the said sale of the said real estate in the Davenport Gazette, a newspaper published in the city of Davenport, in said Scott County, for the space of four weeks prior to said sale, the same being a copy of the notices posted as aforesaid.

And as a further return upon this writ, I certify that on Saturday, the 29th day of September, 1860, at the hour of 2 o'clock p. m. of said day, at the court-house of said county, that being the time and place of said sale, as advertised by said notices as aforesaid, a copy of which is attached to the execution in this case, I did offer for sale the above-described real estate at public outcry, and then and there I did sell the same unto D. Whittemore & Son as follows, to wit:

Lot	1	in bl.	20	in the city of Davenport				for the sum of	six hundred dollars.
"	2	"	20	"	"	"	"	"	six hundred "
"	3	"	20	"	"	"	"	"	three hundred "
"	3	"	13	"	"	"	"	"	one hundred "
"	6	"	13	"	"	"	"	"	one hundred "

623 And the above-described land in Le Claire Township for twelve hundred and fifty dollars; that is, all the above-described real estate for the sum of twenty-nine hundred and fifty (2,950) dollars, they being the highest and best bidder therefor in cash, the same was struck off to them as the purchasers thereof.

Dated this 29th day of September, 1860.

(Signed) JAMES THORNGTON,
Sheriff of Scott Co., Iowa.

Bill of accruing costs.

Levy, $2; inventory, $1; & mileage, $1 50	$4 50
Advertising	10 00

Posting notices	3 20
Sale and certificate	2 00
½ com. on $2,950 00	18 00
	$37 95

Damages	$2,464 36
Interest	447 40
Cost on execution	10 10
Accruing cost	37 95
Total due	2,959 81
Sold for	2,950 00
Bal. due	$9 81

Rec'd five $\frac{50}{100}$ doll's in full of co. costs.
(Signed) IRA M. GIFFORD, *Clerk.*

Rec'd, Davenport, Iowa, Aug. 20th, 1861, of John Andoe, thirteen hundred and eighty-one & $\frac{32}{100}$ dollars, for the redemption of the 1st above tract described herein in Le Claire's upper reserve, being the same land sold for twelve hundred and fifty dollars at sh'ff's sale, as above shown.
(Signed) IRA M. GIFFORD, *Clerk D. C.*

Rec'd, Davenport, Iowa, Aug. 20th, 1861, of Ira M. Gifford, clerk, thirteen hundred and eighty-one $\frac{32}{100}$ dollars.
(Signed) DAVISON & TRUE,
Att'ys for Plaintiff.

624 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full, true, and complete exemplication of all the papers, record entry, execution, and returns of the execution in the above-entitled cause, as the same appears on file in said office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at office in the city of Davenport, in said county, this 9th day of April, A. D. 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

[5-ct. U. S. revenue stamp: I. M. G., Apr. 9, '63.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 9th day of April, A. D. 1863.

(Signed) JOHN F. DILLON,
Judge 7th Judicial District.

[5-ct. U. S. revenue stamp; J. F. D., April 9, '63.]

625 (Indorsed:) No. 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'rs of A. Le Claire & als. Def'ts' exhibits.

Filed Oct. 22, '63.
(S'g'd) W. G. WOODWARD,
Clerk C. C. U. S.

626 No. 6.—*John P. Cook vs. James May.*

EXHIBIT No. 6.

(Indorsed:) Filed Oct. 22, 1863.

In circuit court of the United States, northern district of Illinois.

Pleas in the circuit court of the United States of America for the northern district of Illinois, before the Hon. Thomas Drummond, judge of the district court for the district aforesaid and on Saturday the twenty-fourth day of December, one thousand eight hundred and fifty-nine, and of our indendence the eighty-fourth year.

(Signed) WM. H. BRADLEY, *Clerk.*

JOHN P. COOK } Assumpsit.
v.
JAMES MAY. }

Be it remembered that on the second day of December, A. D. one thousand eight hundred and fifty-nine, said plaintiff, by Goudy & Waite, his attorneys, came into the clerk's office of the circuit court of the United States for the northern district of Illinois, and filed his precipe for summons, and bond for costs, which read in the words and figures following, to wit:

Precipe for summons.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

Circuit court, December term, A. D. 1859.

627 JOHN P. COOK } In assumpsit, damages $5,000.
v.
JAMES MAY. }

The clerk of said court will issue a summons in the above cause, directed to the marshall of said district in a plea of trespass on the case upon promises, returnable on the third Monday of December, A. D. 1859, to the damage of the plaintiff of five thousand dollars.

(Signed) GOUDY & WAITE,
Plaintiff's Attorneys.

To WILLIAM H. BRADLEY, Esq., *Clerk.*

CHICAGO, *December 2d*, 1859.

(Endorsed:) Filed December 2d, 1859.

WM. H. BRADLEY, *Clerk.*

Bond for costs.

Circuit court of the U. S., northern district Illinois.

JOHN P. COOK } In assumpsit, damages $5,000.
v.
JAMES MAY. }

We do hereby enter ourselves security for costs in this cause and acknowledge ourselves bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court in pursuance to the laws of this State.

628 Dated this second day of December, A. D. 1859.

(Signed) GOUDY & WAITE.

(Endorsed:) Filed Dec. 2d, 1859.

(Signed) WM. H. BRADLEY, *Clerk.*

And thereupon a summons issued to the marshall of this district aforesaid, which, with his return thereon endorsed, reads in the words and figures following, to wit:

Summons.

Circuit court of the United States of America, northern district of Illinois.

The United States of America to the marshall of the northern district of Illinois, greeting:

We command you that you summon James May, if he shall be found in your district, to be and appear before our judges of our circuit court of the United States of America for the northern district of Illinois, at the next term thereof, to be holden at Chicago, in the district aforesaid, on the third Monday of December instant, to answer unto John P. Cook in a plea of trespass on the case upon promises, to his damage, as he alleges, of five thousand dollars, and have you then and there this writ.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme
[L. S.] Court of the United States of America, at Chicago aforesaid, this second day of December, in the year of our Lord one thousand
629 eight hundred fifty-nine, and of our independence the 84th year.

(Signed) WM. H. BRADLEY, *Clerk.*

Marshall's return.

I have served this writ by reading to James May this 12th day of Dec., 1859.

(Signed) C. N. PINE, *U. S. M.*,
By J. C. BULLOCK, *Dep'ty.*

(Endorsed:) Filed Dec. 19, 1859.

(S'g'd) WM. H. BRADLEY, *Clerk.*

And on the 2d day of December, A. D. 1859, said plaintiff, by his attornies, came and filed his declaration in the words and figures following, to wit:

Declaration.

Curcuit court of the United States for the seventh circuit and northern district of Illinois.—Of the December term, A. D. 1859, ss.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

John P. Cook, who is a citizen and resident of the State of Iowa, plaintiff in this suit, by Goudy and Waite, attorneys, complains of James May, who is a citizen of the State of Illinois, and resident of said district, defendant, on a plea of trespass on the case on promises, for that whereas heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-six, at Davenport, in the State of Iowa, to wit, in said district, the said defendant made and executed his promissory note of that date and delivered the same to one George F. Kettell, and therein promised to pay to the order of said George F. Kettell, one year thereafter, at the office of Tallman, Powers & McLean, three thousand one hundred and seventy-five dollars, for value received, with interest after due, at the rate of ten per cent. per annum, the said Kettell then and there and at the time of the maturity of said note, and now, a resident of the State of New York; and afterwards, to wit, on the day and year aforesaid, at the district aforesaid, the said George F. Kettell endorsed and delivered said note to the plaintiff, whereby the said dependant became liable to pay said sum of money to the plaintiff, by force of the statute in such cases provided and of the law merchant.

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And whereas also heretofore, to wit, on said 1st day of November, A. D. 1856, at Davenport aforesaid, to wit, at said district, said defendant made, executed, and delivered to one George F. Kettell, said Kettell then and there did at the maturity of said note and now being a citizen and resident of the State of New York, his (the defendant's) promissory note, whereby the said defendant, one year after that date, promised to pay to said George F. Kettell, or order, at the office of Tallman, Powers and McLean, three thousand one hundred and twenty-five dollars, for value received, with interest at the rate of ten per cent. after due, (meaning ten per cent. per annum;) and afterwards, to wit, on the day and year aforesaid, at said district, said Kettell endorsed and delivered said note to said plaintiff, by means whereof and by force of the statute and of the law merchant, the said defendant became liable to pay said money to the plaintiff; and afterwards, to wit, on the 24th day of October, A. D. 1859, (eighteen hundred and fifty-nine,) said plaintiff lost said note and cannot, after the most diligent and thorough search, find the same; and whereas also the said defendant afterwards, to wit, on the second day of December, in year of our Lord one thousand eight hundred and fifty-nine, to wit, at the district aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of five thousand dollars of lawful money [of lawful money], for the work and labor, care and diligence, attention and attendance, of the said plaintiff by the said plaintiff before that time done, performed, bestowed, and given in and about the goods, chattels, wares, machinery, property, premises, possessions, and business of said defendant, and for the said defendant, and at the special instance and request of said defendant, and also for divers materials and other necessary things by the said plaintiff before that time found, furnished, provided, used, and applied in and about that work and labor for the said defendant at the like special instance and request of said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, after-

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wards, to wit, on the same day and year and at the place aforesaid, undertook and then and there faithfully promised the said plaintiff well and truly to pay to said plaintiff said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also afterwards, to wit, on the same day and year, and at the place aforesaid, in consideration that said plaintiff had before that time done, performed, bestowed, and given other work and labor, care and diligence, attention and attendance, of the said plaintiff in and about the goods, chattels, wares, machinery, property, premises, possessions, and business of the said defendant, at the request of said defendant, and had also at the like special instance and request of said defendant
632 before that time found, furnished, provided, used, and applied divers other materials and necessary things in and about the said last-mentioned work and labor of the said plaintiff, the said defendant undertook, and then and there faithfully promised the said plaintiff well and truly to pay to the said plaintiff so much money as the last aforesaid work and labor and materials of said plaintiff at the time aforesaid were reasonably worth, when said defendant should be thereunto afterwards requested, and the said plaintiff avers that the same at said time were reasonably worth the further large sum of five thousand dollars of like lawful money at the time and place aforesaid, whereof the said defendant afterwards, to wit, at the time and place aforesaid, had notice.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, became and was indebted to the said plaintiff in a large sum of money, to wit, the sum of five thousand dollars, lawful money, for divers goods, wares, and merchandize, by the said plaintiff before that time sold & delivered to the said defendant, and at the special instance and request of the said defendant, and being so indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then & there faithfully promised the said plaintiff, well and truly to pay to the said plaintiff, the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also afterwards, to wit, on the same day and year and at the place aforesaid, in consideration that the said plaintiff had before that time, at the like special instance and request of the said defendant, sold and delivered to the said defendant divers other goods, wares, and merchandise of the said plaintiff, the said defendant then and there undertook and faithfully promised the said plaintiff that the said defend-
633 ant would well and truly pay to the said plaintiff so much money as the last aforesaid goods, ware, and merchandise at the time of the sale and delivery thereof were reasonably worth, when the said defendant should be thereunto afterwards requested; and the said plaintiff aver that the said goods, ware, & merchandise last mentioned, at the time of the sale and delivery thereof, were reasonably worth the further large sum of money, to wit, the sum of five thousand dollars, of like lawful money aforesaid, to wit, at the place aforesaid, whereof the said defendant afterwards, on the same day and year, and at the place aforesaid, had notice.

And whereas also the said defendant afterwards, to wit, on the same day and year and at the place aforesaid, indebted to the said plaintiff in the further large sum of money, to wit, the sum of five thousand dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendant and at the like request of the said defendant, and for other money by the said plaintiff

before that time paid, laid out, and expended for the said defendant and at the like request of the said defendant, and for other money by the said defendant before that time had and received to and for the use of the said plaintiff, and for other money before that time and then due and owing the said plaintiff for interest upon and for the forbearance of divers other sums of money before that time and then due and owing from said defendant to said plaintiff, and being so indebted the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said
634 plaintiff the said several sums of money in this count mentioned, when the said defendant should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place aforesaid, accounted with the said plaintiff of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there found to be in arrear and indebted to the said plaintiff in the further large sum of money, to wit, the sum of five thousand dollars, of like lawful money as aforesaid, and being so found in arrear and indebted to the said plaintiff, the said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sum of money last mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, &c.) has not yet paid the several said sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof to the said plaintiff, the said defendant has hitherto altogether refused, and still doth refuse, to the damage of the said plaintiff of five thousand ($5,000) dollars, and therefore the said plaintiff brings suit, &c.

(Signed) GOUDY & WAITE,
Plaintiff's Attorneys.

635 *Copy of instrument & account sued on.*

$3,125. DAVENPORT, IOWA, *November 1st*, 1856.

One year after date I promise to pay to George F. Kettell, or order, at the office of Tallman, Powers & McLean, three thousand one hundred and twenty-five dollars, for value received, with interest after due, at the rate of ten per cent. This note is secured by mortgage of same date.

(Signed) JAMES MAY.

(Endorsed:) Interest on this note acknowledged to be paid to November 1st, 1858.

(Signed) GEORGE F. KITTELL.

Without recourse on me.

(Signed) GEORGE F. KITTELL.

(Endorsed:) Filed this second day of December, 1859.

(Signed) WM. H. BRADLEY, *Clerk.*

And afterwards, to wit, on Saturday, the 24th day of December, A. D. 1859, of the December term of said court, in the record of the proceedings thereof, is the following entry, to wit:

JOHN P. COOK } Assumpsit.
v.
JAMES MAY. }

636 Now comes the plaintiff, by Messrs. Goudy & Waite, his attorneys' and it appearing to the [the] court that the defendant has been regularly served with process, and he being now ruled to plead instanter and failing to plead or answer to said rule, and the said defendant being now three times solemnly called, comes not, but makes default. It is hereupon considered by the court that his default be entered, and that the plaintiff have and recover of the defendant his damages, but as those damages are not certainly known, and it appearing to the court that this action is instituted upon a certain promissory note of hand for the payment of money only, it is ordered that it be referred to the clerk to assess the damages thereon, and the clerk having assessed said damages at the sum of three thousand four hundred and eighty-three dollars and fifty-two cents, and reported the same to the court, which being approved, it is thereupon considered and adjudged by the court that the plaintiff have and recover of the defendant the said sum of three thousand four hundred and eighty-three dollars and fifty-two cents, his damages so as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of thirty-nine dollars & fifty-three cents, and that he have execution therefor.

And afterwards, to wit, on the 27th day of December, A. D. 1859, the following assignment was filed in the office of the clerk of said court aforesaid, to wit:

For value received, I hereby transfer, assign, and set over unto Geo. L. Davenport all my right, title, and interest in and to a certain note executed by James May to Geo. F. Kittell, for the sum of three
637 thousand one hundred and twenty-five dollars, which said note is now in suit in my name in the U. S. district court, Chicago, Ill's, hereby authorizing the said Davenport to collect and receive the proceeds thereof.

Witess my hand this 16th day of December, 1859.

(Signed) JNO. P. COOK.

Witness: (S'g'd) W. T. CLARK.

(Endorsed:) Filed Dec. 27th, 1859.

(Signed) WM. H. BRADLEY, *Clerk.*

638 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for the northern district of Illinois, do hereby certify the foregoing to be a full, true, and complete transcript of the record of the cause wherein John P. Cook was plaintiff and James May was defendant, as the same appears from the records of said court now remaining on file in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at office, in Chicago, this 5th day of May, A. D. 1863, and of our independence the 87th year.

[L. S.] (Signed) WM. H. BRADLEY, *Clk.*

[Rev. s., 5 c'ts.]

639 (Indorsed:) 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'c'rs, &c., & als. No. 25, eq. In equity. Def'ts' exhibit.

Filed Oct. 22, '63.
(Signed) W. G. WOODWARD,
Clerk C. C. U. S.

640 No. 7.—*Jeremiah Dunlevy vs. James May.*

EXHIBIT No. 7.

(Indorsed:) Filed Oct. 22, 1863.

JEREMIAH DUNLEVY }
vs.
JAMES MAY. }

Index.

Page 2. Petition.
" 4. Original notice.
" 5. Record entry.
" 6. Notes.
" 6. Clerk's certificate.

Transcript fees, $2 00.

641 STATE OF IOWA, *Scott County, ss:*

Be it remembered that at a term of the district court holden in and for said county, in the city of Davenport therein, on the 5th day of February, in the year of our Lord one thousand eight hundred and fifty-nine, was present the Honorable John F. Dillon, sole presiding judge; Harvey Leonard, sheriff of said county; and Ira M. Gifford, clerk of said court; when the following, among other, proceedings were had, to wit:

JEREMIAH DUNLEVY }
vs.
JAMES MAY. }

Be it remembered that heretofore, to wit, on the 13th day of January, 1859, there was filed in the office of the clerk of the district court of Scott County a petition, which is in the words and figures following, to wit:

JEREMIAH DUNLEVY }
vs. } In the district court, Jan. term, 1859.
JAMES MAY. }

To the district court of Scott County, Iowa:

Your petitioner, Jeremiah , claims of the defendant, James May, the sum of two thousand dollars, which he alleges to be justly due him from said defendant, and for cause of such claim states that the said defendant executed a promissory note to your said petitioner, dated October 20th, 1855, for the sum of one thousand dollars, payable six

642 months after date, which said promissory note is still the property of your petitioner, said note being in words & figures as follows:

"$1,000 00. DAVENPORT, *Oct. 20th*, 1855.

"Six months after date I promise [I promise] to pay the order of Jeremiah Dunlevy, one thousand dollars, with ten per cent. interest on the same until paid, without defacation, for value received. (Specie fund.)

(Signed) "JAMES MAY."

Upon which is the following endorsement:

"Rec'd $200, Feb'y 23d, 1858."

And your petitioner avers that said note has not been paid, though duly demanded, and is long since due.

And for further cause of said claim your petitioner states that on the 20th day of October, 1855, the said defendant executed unto the order of your petitioner his promissory note of that date, payable six months after date for eight hundred dollars, ($800,) with ten per cent. interest, which said note is as follows, to wit:

"$800. DAVENPORT, *Oct. 20th*, 1855.

"Six months after date I promise to pay the order of Jeremiah Dunlevy eight hundred dollars, (specie funds,) with ten per cent. interest on same until paid, without defalcation, for value received.

(Signed) "JAMES MAY."

Upon which is the following endorsement:

"Rec'd $200, Mar. 4, 1858."

And your petitioner saith that, though often requested, the said defendant has hitherto wholly neglected and refused to pay said
643 note, and still doth neglect and refuse. Your petitioner avers that said two notes above set forth are still his property and the amount claimed is still due thereon.

He therefore asks judgement for that amount, with interest and costs.

(Signed) JEREMIAH DUNLEVY,
By JOHN N. CRAWFORD.

Then afterwards there was filed with the clerk of said court the original notice in words and figures as follows, to wit:

Original notice.

STATE OF IOWA, *Scott County:*

To JAMES MAY.

SIR: You are hereby notified that there is now on file in the office of the clerk of the district court in Scott County a petition of Jeremiah Dunlevy, claiming of you two thousand dollars, as money due him upon two promissory notes made by you to him, one for one thousand dollars and the other for eight hundred dollars, both dated October 20th, 1855, and bearing interest at ten per cent., both due six months after date; and that unless you appear and answer thereto on or before the twenty-

fifth day of January, 1859, judgement will be rendered against you thereon.

Dated this 12th day of January, A. D. 1859.

(Signed) JEREMIAH DUNLEVY, *Plaintiff*,
By JOHN N. CRAWFORD, *his Attorney*.

Upon which appears the following endorsement:

644 Served this notice by personally reading the same to James May. No copy of this notice nor the original petition demanded. January 13th, 1859.

(Signed) H. LEONARD, *Sheriff*.
Per STRATTON.

Fees, 60 cts.

Then afterwards, to wit, on the 8th day of February, 1859, there was made the record entry in words and figures as follows, to wit:

JEREMIAH DUNLEVY
vs. } 3857.
JAMES MAY.

This day came the said plaintiff, by John N. Crawford, his attorney, and the said defendant, although duly and personally served with notice as required by law, and being three times solemnly called in open court, came not, but herein makes default.

It is therefore considered by the court that plaintiff do have and recover of and from the defendant his damages by him herein sustained. And it appearing to the court that this suit is brought upon a money demand, and the damages being unknown to the court, it is ordered by the court that the clerk assess the same. Thereupon the clerk assessed and reported the damages in the sum of two thousand (2,000) dollars, which report is accepted by the court. It is therefore ordered by the court that plaintiff have and recover of the said defendant the sum of two thousand (2,000) dollars, damages assessed as aforesaid, together with interest at the rate of ten (10) per cent. per annum, and six (6) dollars and ten (10) cents costs, and that execution issue therefor.

Then afterwards, to wit, on the 9th day of February, 1859,
645 there was filed two notes in words and figures as follows, to wit:

$1,000. DAVENPORT, *Oct. 20th*, 1855.

Six months after date, I promise [I promise] to pay the order of Jeremiah Dunlevy, one thousand dollars with ten per cent. interest on same until paid, without defalcation, for value received. "Specie funds."

(Signed) JAMES MAY.

Upon which is endorsed:

Rec'd $200, Feb. 23d, 1858.

$800. DAVENPORT, *Oct. 20th*, 1855.

Six months after date I promise to pay the order of Jeremiah Dunlevy, eight hundred dollars, (specie funds,) with ten per interest on same until paid, without defalcation, for value rec'd.

(Signed) JAMES MAY.

Upon which is endorsed:

Rec'd 200, Mar. 4th, 1858.

Then afterwards, to wit, on the 2d day of January, 1862, there was issued out of the clerk's office in said court an execution, of which there is no return.

STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court in and for said county, do hereby certify that the foregoing is a full, true, and complete transcript of all the papers on file in my office, and of the record entry in the above-entitled cause, wherein Jeremiah Dunlevy is plaintiff, & James May is defendant.

In testimony whereof I have hereunto set my hand and caused
646 the seal of said court to be affixed hereto, in the city of Davenport, in said county, this 10th day of April, A. D. 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

[5-ct. U. S. revenue stamp canc'd.]

STATE OF IOWA, *Scott County, ss:*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 10th day of April, 1863.

(Signed) JNO. F. DILLON,
Judge 7th Judicial District.

[5-ct. U. S. revenue stamp canc.]

647 (Indorsed:) No. 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'rs of A. Le Claire & als. No. 25. Def'ts' exhibit.

Filed Oct. 22, '63.
(Signed) W. G. WOODWARD,
Clerk C. C. U. S.

648 No. 8.—*Mary Tumulty vs. James May and A. Waity.*

EXHIBIT NO. 8.

(Indorsed:) Filed Oct. 22, 1863.

MARY TUMULTY ET AL.
vs.
JAMES MAY & A. WAITY.

Fees, $1 25.

Transcript.

649 STATE OF IOWA, *Scott County, ss:*

Be it remembered that after the June term of the district court in and for said county, in the city of Davenport therein, on the 23d day of July, A. D. 1860, there was filed with the clerk of said court a transcript of judgement, in words and figures as follows, to wit:

MARY TUMULTY ET AL.
vs.
JAMES MAY & A. WAITY.

STATE OF IOWA, *County of Lee, ss:*

At a term of the district court begun and held at the court-house in the town of Fort Madison, in said county, on Monday, the 16th day of May, A. D. 1860, the Hon. Francis Springer, judge of the first judicial district of the State of Iowa, presiding, when, among other proceedings was the following, to wit:

Tuesday, May 19th, 1859.

MARY TUMULTY, AND THOMAS L. TUMULTY, Agnes Tumulty, minors, by their guardian, Mary Tumulty,
vs.
JAMES MAY & ADRAIN WAITY.
} Right.

This day this cause came on to be heard, Rankin, Miller & Enster appearing as attorneys for the plaintiff, and C. E. Moss & G. R. Todd, for defendants, and Hismer Curtis for defendant Adrian Waity; and there came a jury of twelve competent men, who were duly empanelled
650 and sworn, and whose names are as follows: I. D. Gedney, P. H. Babcock, J. S. Gillmore, J. P. Deyoe, Jos. Pebbs, Isaac Johnson, Henry Winters, J. M. Layton, Wm. McDaniel, John Alexander, Joshua Anderson, Joseph McCorkle. And the testimony of plaintiffs and defendants being heard, and the jury being instructed as to the law, the jury retired to consider as to a verdict, and in open court returned a verdict for plaintiffs, to wit: "We, the jury, find the right to the immediate possession of the property in controversy to be in the plaintiffs, and assess their damages at the sum of three hundred and seventy-five dollars." It is therefore ordered and adjudged by the court that the plaintiff have and recover of the defendants the immediate possession of lot No. 10 (ten) in block ten (10) in the city of Keokuk, Lee County, Iowa, and that a writ issue accordingly; and it is further ordered and adjudged that the plaintiffs have and recover of defendants the sum of three hundred and seventy-five dollars damages, & costs of suit, and that execution issue therefor, $14 85.

STATE OF IOWA, *County of Lee:*

I, Erie J. Leach, clerk of the district court in and for said county, do certify the foregoing to be a true copy of the original record made in the foregoing entitled cause in the district court of said county at Fort Madison.

Witness my name and seal of office, at Fort Madison, July 18th, A. D. 1860.

[SEAL.] (Signed) ERIE J. LEACH, *Clerk D. C.*,
By D. H. LEMER, *Deputy.*

Fees, 75c., for copy.

STATE OF IOWA, *Scott County, ss:*

651 I, Ira M. Gifford, clerk of the district court in & for said county, do hereby certify that the foregoing is a full, true, and complete transcript of the transcript of judgement on file in my office.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be hereto affixed, at office in the city of Davenport in said county, this seventeenth day of April, A. D. 1863.

[SEAL.] (Signed) IRA M. GIFFORD,
Clerk of the District Court.

STATE OF IOWA, *Scott County, ss :*

I, John F. Dillon, sole presiding judge of the district court in and for said county, hereby certify that Ira M. Gifford is clerk of said court, and that the above attestation made by him is in due form.

In testimony whereof I have hereunto set my hand this 17th day of April, A. D. 1863.

(Signed) JNO. F. DILLON,
Judge 7th Judicial District.

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653 (Indorsed:) 25, eq. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., ex'rs of A. Le Claire & als. Def'ts' exhibit. No. 25, eq.

Filed Oct. 22, '63.
(Signed) W. G. WOODWARD, *Clerk C. C. U. S.*

654 6.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—
1st. Complainant's motion for revivor.
2d. Motion for new appointment of a guardian ad litem.
3d. Ded. pot. to R. D. Congdon to take testimony.
4th. Rufus Linderman appointed comm'r to take depos'ns.
5th. Affidavit of comp't for retaking deposition of Jos. A. Le Claire.
6th. Agreement to adjourn taking said depos'n.
7th. Affidavit of J. N. Rogers, &c., and Elwood's answer.
8th. R. D. Congdon's affidavit.
9th. Plaintiff's affidavit for extension of time.
10th. Motion & order to send certain papers for recertification of recorder.
655 11th. Motion of def'ts, & order to enlarge time.
12th. Agreement as to time of exceptions.
13th. Motion of pl't'ff, & order to read certain exhibits.
14th. Order taking cause under advisement.
15th. Final decree.

656 No. 1.

JAMES MAY
vs.
ANTOINE LE CLAIRE, L. C. DESSAINT, J. P. Cook, & others. } In chancery.

And now comes plaintiff, & moves the court that this cause be ordered

to stand revived as against all those defendants named in plaintiff's bill of revivor, on which service has been made, as shown by the marshall's return on the subpœna issued in said cases, whose names are as follows, to wit: Marguerite Le Claire & George L. Davenport, executors of Antoine Le Claire, deceased; and Marguerite Le Claire, Joseph A. Le Claire, David A. Le Claire, Louis Le Claire, Antoinette Le Claire, & Mary Le Claire, devisees of said Antoine Le Claire, deceased.

April 5th, 1862.

LOWRIE & MILLER,
& RANKIN & MILLER,
& JOSEPH WILLIAMS,
Attorneys for Plaintiff.

657 No. 2.

In the circuit court of the U. S. for Iowa.

JAMES MAY
vs.
MARGUERITE LE CLAIRE & GEORGE L. DAvenport, executors of A. Le Claire, deceased, & others.

The undersigned, in behalf of E. Jeffords, esq., who, by order of the district court prior to the organization of this court, to wit, on the 2d day of June, 1862, was appointed guardian ad litem of the defendants David Napoleon Le Claire, George Le Claire, Louis Le Claire, Antoinette Le Claire, & Mary Le Claire, minor heirs and devisees of Antoine Le Claire, deceased, represents that said Jeffords is now, and has been for some months last past, in the military service of the United States in the State of Mississippi, and that his employment and absence from Iowa are incompatible with his proper performance of his said appointal of guardian. (The accompanying letter, marked "A," is made a part of this application.) The undersigned, therefore, moves that said Jeffords may be discharged and released from his said guardianship duties, and that another guardian ad litem for said infant defendants may be appointed in his place and stead.

Nov. 3d, 1862.

D. F. MILLER,
Att'y for E. Jeffords.

658 EXHIBIT "A."

QUARTERMASTER DEPARTMENT,
Corinth, Miss., Oct. 20, 1862.

Hon. DAN'L F. MILLER, *Keokuk, Iowa.*

D'R SIR: Your favor of the 13th inst., and in reply would say that about the 6th inst. I received a letter upon the same subject to which your letter relates; (upon reflection, I am mistaken about its being the 6th when I received it.) It was written on the 6th by Capt. May. It must have been on the 12th when it reached me, by the hand of Col. Hillis. I answered it by return mail, and it probably left here on the 13th, the very day on which yours was written, and has doubtless reached you ere this. For fear, however, that that letter may by possibility have miscarried, I authorize you to present my resignation as

guardian ad litem in the case of James May vs. Antoine Le Claire et al., pending in the U. S. dist. court for the dist. of Iowa.

Allow me to reciprocate the kind sentiments expressed by you toward me. Present my kindest regards to Judge Love, Lowrie, Brown, & others.

With best wishes for your prosperity and happiness, I am, yours, truly, &c.,

E. JEFFORDS.

659 Keokuk, Iowa, at chambers.

This motion is allowed, and the guardian ad litem therein named is released from said office, and Gibson Brown is appointed in his stead as guardian ad litem to said infant defendants.

Nov. 5th, 1862.

J. M. LOVE, *Judge U. S. D. Court.*

660 (Indorsed:) 25, q. James May vs. Antoine Le Claire. Order appointing G. Brown guardian ad litem.
Filed Nov. 13th, '62.

WOODWARD, *Clk.*

661 No. 3.

Dedimus potestatum.

CIRCUIT COURT OF THE UNITED STATES,
District of Iowa, ss:

To R. D. Congdon, esq., a notary public in and for the county of Scott and State of Iowa, & special commissioner of the circuit court of the United States in & for the district of Iowa, at Davenport, Iowa:

Know ye that, in confidence of your prudence & fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine Marguerite Le Claire, Adrian H. Davenport, Joseph A. Le Claire, Annie Le Claire, & George Wilson on their corporal oaths as witnesses in a cause depending in the circuit court of the United States for the district of Iowa, wherein James May is plaintiff, & Marguerite Le Claire & George L. Davenport, executors of the last will of Antoine Le Claire, deceased, & others, are defendants, on the part of the plaintiff, upon the interrogatories annexed to this commission. And therefore you are hereby commanded that, at certain days and places to be appointed by you for that purpose, you do cause the said Marguerite, Adrian H., Joseph A., Annie, & George to come before you, and then & there examine them on oath upon the said interrogatories, and that you reduce such examination to writing, & return the same, together with the accompanying notice and interrogatories, and this commission, under your seal, sealed up, and indorsed with the names of the parties litigant, & the word "Deposition" on the cover thereof, into the said circuit court at Des Moines, Iowa, to the clerk thereof, with all convenient speed.

662 Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 25th day of January, 1863, and in the 87th year of the indepence of the United States of America.

[SEAL.] Attest: (Signed) W. G. WOODWARD, *Clerk.*

663 Questions to be propounded to Mrs. Marguerite Le Claire, of Davenport, Iowa.

(See deposition of Mrs. Marguerite Le Claire, marked package No. 10.)

Questions to be propounded to Adrian H. Davenport, of Le Claire, Iowa.

(See deposition of A. H. Davenport, in package marked No. 10, and exhibits thereoto attached.)

Questions to be propounded to Joseph A. Le Claire, of Davenport, Iowa.

(See deposition of J. A. Le Claire, in package marked No. 10, red ink.)

Questions to be propounded to Mrs. Annie Le Claire, wife of Joseph A. Le Claire, of Davenport, Iowa.

(See deposition of Mrs. A. Le Claire, in package marked No. 10, red ink.)

Questions to be propounded to George Wilson, of Scott County, Iowa.

A true copy of the interrogatories & cross-interrogatories filed herein.
Attest: (Signed) W. G. WOODWARD,
Clerk C. C. U. S.

664 (Indorsed:) No. 25, eq. James May vs. A. Le Claire's executors.

Filed Apri '63. Opened in open court.
WOODWARD, *Clerk C. C.*

Copies of interrogatories to Mrs. Le Claire, J. A. Le Claire, A. H. Davenport, Annie Le Claire, & Geo. Wilson, with exhibits.

(Indorsed:) Notice for taking depositions of Marguerite Le Claire, Adrian H. Davenport, Joseph A. Le Claire, Annie Le Claire, & George Wilson.

665 No. 4.

Circuit court of the United States for the district of Iowa, October term, A. D. 1863.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERITE LE Claire, executors of the last will of A. Le Claire, dec'd, & others. } No. 25, eq.

OCT. 30TH, A. D. 1863.

On motion of complainant's council, it is now ordered that Rufus Linderman, esq., of the county of Scott, & in the district of Iowa, be, and he is hereby, authorized and empowered to take the depositions on examination of witnesses in the above-named cause, to be used on the hearing of the same in this court.

I certify that the foregoing is a true copy of an order passed in the above cause at the above time.

In testimony whereof I have hereunto set my hand and affixed the seal of the said circuit court, at Des Moines, this 7th day of November, 1863.

[SEAL.] W. G. UNDERWOOD, *Clerk.*

[Stamp: W. G. U., Nov. 7, '63]

666 Circuit court of the United States, district of Iowa.

JAMES MAY
vs.
GEO. L. DAVENPORT & MARGUERET LE CLAIRE, ex'rs of last will of A. Le Claire, dec'd, et al. } 25, eq.

I, James May, do state that I have reason to believe that the retaking of the deposition of Joseph A. Le Claire may be very important in the above case to supply in part the necessity of the testimony of Charles Powers, dec'd, which has been ruled out in part by the court. The answers of the said J. A. Le Claire, in both instances when taken by written interrogatories, are evasive & unsatisfactory. Therefore pray the honorable court for a rule to have the said deposition retaken, and that said witness may be constrained to answer oral interrogatories.

JAMES MAY.

Sworn & subscribed before me this 30th October, 1863.

W. G. WOODWARD,
Clerk C. C. U. S.

I certify the foregoing to be a true copy of the affidavit on file in the above-named cause.

W. G. WOODWARD,
Clerk of Circuit C't U. S.

667 No. 5.

At a term of the circuit court of the United States in & for the district of Iowa, began & holden at Des Moines, on the 3rd Tuesday of October, A. D. 1863, the following, among other, proceedings, were had, to wit:

Friday, October 30th, 1863.

JAMES MAY
vs.
GEO. L. DAVENPORT & MARGUERET LE CLAIRE, executors of the will of A. Le Claire, dec'd, et al. } No. 25, equity.

Upon the application and affadavit of the said James May, complainant, it is now ordered that the said complainant have leave, and he is hereby authorised, to take again the testimony of Joseph A. Le Claire, to be used on the hearing of the above-mentioned suit, and the said witness, Joseph A. Le Claire, is hereby required & ordered to make answer to such oral interrogatories as may be put to him by or in behalf of any of the parties to the above-mentioned suit.

I hereby certify that the foregoing is a true copy of the order then made in the foregoing suit, as the same now remains of record in my office.

668 In testimony whereof I have hereunto set my hand & affixed the seal of the said circut court, at Des Moines, this 31st day of October, A. D. 1863.

[SEAL.]

W. G. WOODWARD,
Clerk of said Court.

[Stamp: W. G. W., Oct. 31, 1863.]

STATE OF IOWA, *Scott County, ss:*

To the sheriff of Scott County, greeting:

You are hereby commanded to summons Joseph A. Le Claire, if to be found in your county, that he is required to be and appear before me, R. Linderman, county judge of the county of Scott, State of Iowa, and special commissioner in the case now pending in the United States court for the district of Iowa, in which James May is plantiff, and Geo. L. Davenport & Margueret Le Claire, executors, &c., of the last will & testament of Antoine Le Claire, dec'd, et al., are defendants, to give evidence in said action for said plantiff, and for the purpose of cross-examination, at my office in the city of Davenport, county & State aforesaid, on the 22nd day of Feb'y, A. D. 1864, at 9 o'clock a. m.; and have you then & there this subpœna.

Given under my hand this 30th day of Jan'y, A. D. 1864.

RUFUS LINDERMAN, *Commissioner.*

669 STATE OF IOWA, *Scott County, ss:*

I, William Pool, do state, being first duly sworn, that on the 5th day of February, 1864, at Davenport, in the county of Scott, I served the annexed subpœna on Joseph A. Le Claire, a witness therein named, and, upon demand of him at the time of such service, I paid him his fees as such witness.

WM. POOL.

Sub. & sworn before me by Wm. Pool, this 23d day of Feb'y, 1864, as witness my hand & official seal.

[SEAL OF COUNTY JUDGE.]

R. LINDERMAN,
Co. Judge.

Endorsed on back:

Served this subpœna upon J. A. Le Claire Feb'y 23rd, 1864, by reading the same to him, he demanding his fees, which were paid, $1 10.

Fees, 40 cts.

For W. LYTER, *Sh'ff,*
By WM. POOL, *D'p't.*

Rec'd, Davenport, Feb'y 30, '64, from James May, seven $\frac{50}{100}$ dollars, in full for my fees in the within case up to Feb'y 29th, 1864.

J. A. LE CLAIRE.

670 No. 6.

U. S. circut court.

JAMES MAY
vs.
ANTOINE'S EX'CUTO'S & ALS.

It is hereby agreed that the examination of Joseph A. Le Claire, as a

witness for the complainant, now in progress before R. Linderman, special examiner, shall be adjourned to the 22nd day of Feb'y next, provided that no objections to the regularity of the taking of said deposition & no right to move to suppress the same, or any of the depositions taken or to be taken before said examiner for the complainant is hereby waived, but the same are expressly reserved, and shall stand as if this agreement had not been made. It is further agreed that the direct examination being now completed, the witness may sign the same, &, in case of his death or departure beyond the reach of process in the interval, so that his cross-examination shall not be taken before such adjournment, no objections shall be taken to said deposition on the ground of the absence of a cross-examination or the inability of said defendants to cross-examine said Le Claire. It is further agreed that, on five days' notice to plantiff's solisitor from defendants' solisitor, said cross-
671 examination may be [may be] taken at any time from & after February 15th next, although before the time of said agreed adjournment.

Dated Jan'y 29th, 1864.

J. M. ELLWOOD, *Pl'ff's Sol'r.*
J. N. ROGERS, *Def'ts' Sol'r.*

No. 7.

Copy.

DAVENPORT, *Feb'y 12th*, 1864.

J. M. ELLWOOD, Esq.

D'R SIR: As Mr. J. A. Le Claire is talking of leaving town early in week after next, I give you notice, in pursuance of our stipulation, that I will commence his cross-examination in May vs. Le Claire's executors et al., on Satuday, Feb'y 20, next, at 9 o'clock a. m. I presume you will receive this on Monday, at the latest. If equally convenient to you, I should be glad to commence on Friday instead of Saturday, and will do so if you, or some one representing your client, will then attend. But as I cannot be sure of your getting this before Monday, and you are entitled to five days' notice, I give it for Saturday. A line from you acknowledging rec't of this will oblige,

Yours, respectfully,

J. N. ROGERS.

UNITED STATES OF AMERICA, *State of Iowa, Scott C'ty, ss:*

John N. Rogers, being duly sworn, says that he is solisitor for defendants in the case of James May vs. Geo. L. Davenport et al., executors of the estate of Antoine Le Claire, dec'd, et al., in equity, in the circuit court of the United States for the district of Iowa, and that on the
672 12th day of February, A. D. 1864, he deposited in the post office at Davenport, in said district, a letter, of which the within is a copy, directed to J. M. Ellwood, esq., (one of the plantiff's solisitors in said cause,) at Des Moines, in said district, the same being the place of residence of said Ellwood, and paid the postage thereon; and that afterwards he received by mail in answer to said letter, the letter signed by said Ellwood, & hereto annexed.

J. N. ROGERS.

Subscribed & sworn to before me this 15th day of March, A. D. 1864.
R. LINDERMAN, *County Judge.*

DES MOINES, *Feb'y 15th*, 1864.

J. N. ROGERS, Esq.

DEAR SIR: Yours of 12th inst. came to hand this morning. I acknowledge it as service of notice of proceeding with the examination of J. A. Le Claire, on Saturday, the 20th inst., at 9 a. m., pursuant to stipulation of Jan'y 29th.

Yours, &c.,

J. M. ELLWOOD.

U. S. circuit court, district of Iowa.

JAMES MAY, COMPLAINANT,
vs.
GEO. DAVENPORT & MARGUERETE LE CLAIRE, executor & executrix of Antoine Le Claire, dec'd, et al.

STATE OF IOWA, *Scott County, ss:*

I, Louis Herbert, of Davenport, in the county of Scott, being duly sworn, do state that I am well acquainted with Joseph A. Le Claire; that on Monday morning, the 22nd day of Feb'y, 1864, at about 8 o'clock, I saw said Le Claire go on board of the cars at Davenport, in the
673 - State of Iowa, and that the said Le Claire then informed me that he had started and was on his way to Idaho Territory.

LOUIS his + mark. HERBERT.

Attest: W. F. KIDDER.

Subscribed & sworn to before me by Louis Herbert this 31st day of March, 1864.

R. D. CONGDON, *Notary Public.*

[Gov't stamp: R. D. C., N. P., March 31, '64.]

No. 8.

JAMES MAY
vs.
MARGUERITE LE CLAIRE, GEO. L. DAVENPORT, executors of the last will & testament of A. Le Claire, dec'd, et al.

I, R. D. Congdon, on oath, do say that on the 20th day of Feb'y, 1864, Joseph A. Le Claire appeared before R. Linderman, commissioner, for the purpose of testifying in the above-entitled cause; that I appeared as attorney for plantiff, and John N. Rogers, esq., for defendants, the direct examination having been had prior to said time. The cross-examination of said witness on the part of defendants was commenced at or about 9 o'clock a. m. on said day, and continued, with the exception of an adjournment for dinner, until about 7 o'clock in the evening p. m., at which time the defendants closed the cross-examination of witness. It was then proposed by defendants' attorney, or by the witness, or by both, that the testimony taken that day should be read to witness, be by
674 him signed, and that the further examination should be adjourned until Monday, the 23rd Feb. To this plantiff objected, and gave

as his reasons for said objections, that he understood it was the intention of witness to leave the State on the following Monday, and that it was material that a few questions should be propounded to him on the part of plantiff before closing his examination. The witness assured the commissioner and plantiff that he certainly would not leave the city until the following Monday evening; that he would appear at the office of the commissioner at 9 o'clock a. m. of that day, and plantiff might use such part of that day as he pleased in his examination, but that after that day he would not appear for any one, as he should leave the State. The commissioner then proposed that the reading of the evidence should be dispensed with until the next meeting. This was objected to by both defendants' attorney and witness. Plantiff then proposed that the time, if any farther was to be spent that evening, should be used in the re-direct examination of witness. Commissioner finally concluded to read the cross-examination to witness, let him sign the same, and adjourn until the following Monday morning, at 9 o'clock a. m., when this deponent left the office.

R. D. CONGDON.

Subscribed and sworn to before me by R. D. Congdon this 1st day of April, 1864.

[SEAL.]

ALFRED SULLY,
Notary Public, Scott County, Iowa.

[Stamp: A. S., Ap'l 1, '64.]

675 No. 9.

In equity, Oct. term, 1863.—Circuit court of the U. S. for the district of Iowa.

JAMES MAY
vs.
GEO. L. DAVENPORT ET AL., EX'RS OF ANTOINE Le Claire, et al.

I, James May, being duly sworn, say that as soon as practicable after I procured the extension of time for taking depositions, I came here to consult my attorneys, and my attorneys were prompt in giving me instructions, and I took the first stage & first train I could take to reach Davenport. Immediately on my arrival at Davenport I employed a lawyer to prepare for and attend to the taking of several depositions; as soon as the notices could be procured, I personally served one copy of notice on John N. Rogers, esq., at his own residence, where I proposed to read the original to him, when he refused to hear it read, and said that there should not be any depositions taken in that case, and that the time for taking depositions in that case expired on the 1st of September last, and that extension of time could not be legally obtained. Mr. Rogers, in rather a rude manner, said to me that his office, and not his residence, was the place to serve a notice. I stated to him that I came to his residence to serve this notice, that one day's time
676 might be saved; this was on the evening of the 14th inst. On the morning of the 15th, the county judge informed my attorney & self, th J. N. Rogers, esq., had protested against the taking of testimony on what the county judge & my attorney, on consultation, concluded was slight technicality, but determined to draw up a new set of papers, which papers were not completed until late in the afternoon. To save

time I again took the papers to serve them or have them served on that night, as the failure to serve them on that night would deprive us entirely of any legal right to take any depositions, at least so I was informed and believed. The service was on Friday evening of notice to take depositions on Monday, which was the last day we were authorised by the court to take depositions. A few minutes after the signature of the county judge was put on the notice, I took the notice & a copy of the same to the residence of J. N. Rogers, esq., as I presumed he was more likely to be there than at his office. He was not in. I went some six or seven squares towards his office and met him going towards his
677 residence. I spoke to him. He refused to recognise or answer me, but walked on at moderate speed; by the time he was some twenty steps from me, I concluded to follow him to his residence and serve the notice there. I walked rather fast, and as I got near to him he hastened his speed considerably, and I done the same. When he was within a few steps of the door of his residence, I said to him in language that he (I believe) could hear distinctly, that I had a notice that I desired to serve on him. He went into the house and shut the door. I rang the bell several times, but did not induce any one to come to or open the door. I then pushed a copy of the notice under the door and went to the residence of the county judge to learn from him if the attempt I had made to service would be a legal notice. The judge said he believed the notice was good, but that as Mr. Rogers was tecnical, it might be better to have a copy served by an officer. I then went to my attorney, where we prepared two more copies of notices; by advice of my attornies I went to the residence of the sheriff of Scott County, where I learned that he was absent from the city. I then went
678 several squares to a deputy of the sheriff, in whose hands I placed the papers, and instructed him to serve one notice & subpœna on Geo. L. Davenport, executor, &c., reading, &c., as the law prescribes. Geo. L. Davenport demanded his fees, which I handed to the officer, who swears he paid the same to G. L. D. The officer & myself went to the residence of J. N. Rogers, esq., when Mr. Rogers came to the door, where he rec'd a copy of notice. On Monday morning the county judge informed my attorney & self that J. N. Rogers, attorney for defendants, had written a letter to him, protesting against taking any depositions, and stating that he would not be in attendance. I learned that Geo. L. Davenport was about to leave Davenport on a steamboat that was on the eve of starting, and as Geo. L. Davenport did not appear some time after the hour appointed, I feared he would leave the city soon, and applied for & procured an attchment for him, had it placed in the hands of an officer who brought him to the judge's office. The interrogatories were put and answered, as they are furnished to the court. I can state that I attempted on the 14th inst. to notify and subpœna George L. Davenport as a witness in this case, when he refused to accept
679 service from me, and said I should employ an officer, which I did. I can say that John Rogers, esq., went into a discussion with me, in his own residence, on the subject of taking depositions in this case, and contended that my time for taking depositions in this case had expired on the first day of Sept., and that we could not have any legal authority for taking any depositions. I stated to him that I had obtained what might be good authority, or something signifying the same. His uncourteous demeanor admonished me to make the visit short.

JAMES MAY.

Sworn to before me this 23d Oct., 1863.

W. G. WOODWARD, *Clerk, &c.*

STATE OF IOWA, *Scott County, ss:*

To G. C. R. Mitchell, H. C. Fulton, Lucus Bishop, M. D. Snyder, I. M. Gifford, Geo. H. Parker, G. L. Davenport, Joseph Motie, A. H. Davenport:

You and each of you are hereby summoned and required personally to be and appear before the undersigned, commissioner, at my office in Davenport, in the city of Davenport, in said county, on the 16th day of Oct., 1863, at 9 o'clock a. m. of that day, to give evidence in an action pending in the district court of the United States, district of Iowa,
680 southern division, wherein James May is plantiff, & Geo. L. Davenport & Marguirete Le Claire, executors of the last will, &c., of Antonie Le Claire, and others are defendants.

For said plantiff, given under my hand this 15th day of October, A. D. 1863.

R. LINDERMAN, *Commissioner.*

Served this subpœna Oct. 15th, 1863, by reading to Geo. L. Davenport, in Davenport Township, Scott County, Iowa, and by delivering him a copy of the same.

JAMES THORINGTON, *Sh'ff,*
JAMES TEAGARDEN, *Dep'ty.*

I hereby acknowledge service of the within notice Oct. 15th, 1863.

G. C. R. MITCHEL.

I hereby acknowledge service of within notice Oct. 15, '63.

LUCAS BISHOP.

We accept service.

A. C. FULTON.
M. D. SNYDER.
IRA M. GIFFORD.
G. H. PARKER.
JOSEPH MOTIE.

Each and every one of the above-named witnesses agreed, without hesitation, to accept service, except George L. Davenport, who refused to accept any notice from me, and said, "Get an officer to serve notice on me;" which I did.

JAMES MAY.

Sworn to before me this 24 Oct., 1863.

W. G. WOODWARD,
Clerk C. C. U. S.

(Endorsed:) This notice or subpœna was annuled by protest of J. N. Rogers, esq., on the ground that it is signed by commissioner and not by county judge; so my lawyers informed me.

J. MAY.

681 No. 10.

Circuit court of the United States, district of Iowa.

JAMES MAY
vs.
GEO. L. DAVENPORT, EXECUTOR, & MARGUIRETE Le Claire, executrix, of the estate of Antoine Le Claire, deceased, et al.

OCT. 29.

The motion of complainant for a rule or order directing the clerk of

this court to transmit to the recorder of Scott County, Iowa, certain exhibits filed in this court Oct. 12th, 1863, for the purpose of having said exhibits properly certified, is sustained and the clerk of this court is hereby authorised and directed to transmit to the recorder of Scott Co., Iowa, for the purpose of having them properly certified, the following exhibits, on file in this court:

1st. Copy of deed of trust from James May to Charles Powers, dated May 1st, 1857, and filed for record May 4th, 1857.

2nd. Copy of mortgage from James May to Geo. F. Kettell, dated Nov. 1, 1856, and filed for record Nov. 3rd, 1856.

3rd. Copy of notice by James May to Lewis Dessaint & al., dated July 26th, 1859, and filed for record same day.

4th. Deed from Louis C. Dessaint & wife to Ebenezer Cook, dated July 27th, 1859, and filed for record Dec'r 16th, 1859.

5th. Deed from Charles Powers to Louis C. Dessaint upon sale,
682 under deed of trust dated July 20th, 1859, and filed for record in the recorder's office of Scott Co., Iowa, and the notice of sale annexed to the same.

And that on being properly certified by said recorder, and that he has compared the same with the originals on record in his office, and that the copies are copies of the originals on record in his office, the same be returned to and kept by the clerk of this court.

A true copy of the order:

W. G. WOODWARD,
Clerk Circuit Court U. S. for Iowa.

DES MOINES, *Oct.* 29, 1864.

(Indorsed:) May vs. Le Claire. Certified copy order.

683 No. 11.

United States circuit court, district of Iowa.

JAMES MAY
vs.
EBENEZER COOK, JOHN P. COOK, LOUIS C. DESsaint, Geo. L. Davenport, & Geo. B. Sargent, & Geo. L. Davenport & Marguerite Le Claire, executors of Antoine Le Claire, dec'd, et al.

OCTOBER 24, 1864.

And now, on this day, came on to be herd the application of the defendants for leave to take depositions and enlarge the time for taking the same, and also the motion for a continuance made by defendants, and on hearing of said motions the court overruled the application for leave to take the depositions & for enlargement or extention of time to take depositions and granted the motion for a continuance. And it is further ordered by the court, that all motions to be made by either party to suppress or exclude depositions, or parts & portions thereof, shall be filed by the rule day in January next, and that such motions shall be herd by the judge at chambers and decided before the next term of this court, and that this cause be set down for hearing at the next term of this court.

684 No. 12.

In chancery, U. S. court.

JAMES MAY
v.
EX. OF LE CLAIRE ET AL.

It is agreed in this case that the rule requiring exceptions to dep. by the 1st Monday in January next be so modified that either party may file exceptions to the same by the 1st Monday in February, 1865. This agreement not to interfere with the order for hearing at the next term.

Des Moines, Dec. 20, 1864.

C. C. NURSE,
Attorney for Respondents.
J. M. ELLWOOD & J. S. POLK,
For Complainant.

It it further stipulated that the time for filing exceptions to depositions be extended to and including Feb. 20, 1865. This stipulation in no way to affect the order for heering at next term of court.

Feb. 4, 1865.

C. C. NURS, *for Respondents.*

685 No. 13.

May term, 1855.

JAMES MAY
vs
EXECUTORS OF ANTOINE LE CLAIRE & AL. } Chancery, No. 25.

And now, at this term of this court, the complainant's solicitor in open court made application for an order authorizing him to read on the trial and hearing of this action the following exhibits, to wit:

First. A certified copy (by the recorder of Johnson County, Iowa) of a deed executed by Cook & Sargent to Antoine Le Claire, bearing date the 22nd of Dec'r, 1859, and recorded in the recorder's office of Johnson County, Iowa, Dec'r 24th 1859.

Second. A copy of a deed duly certified by the recorder of Scott County, Iowa, executed by Sophia Crosson to Antoine Le Claire, bearing date the 11th day of February, 1852, & recorded in the recorder's office of Scott County, Iowa, on the 3d day of Dec'r, A. D. 1852.

Third. A certified copy of the assignment of Cook & Sargent and the members of said firm (for the benifit of creditors) to J. Wilson Drury & George L. Davenport, dated Jan. 23d, 1861, & the schedules annexed thereto and recorded in the recorder's office of Scott County, Iowa, same day.

Fourth. A certified copy of mortgage upon real estate, excuted by Ebenezer Cook & wife, & John P. Cook & wife, & George B. Sar-
686 gent & wife, for ($70,000) seventy thousand dollars, to Antoine Le Claire, dated August 21st, 1858, and recorded in recorder's office of Scott County, Iowa, December 16, 1859.

Fifth. A copy of the inventory of the property of Cook & Sargent, and Sargent & Dixwell, Ebenezer Cook, George B. Sargent, John P. Cook, John C. Davie & Geo. B. Dixwell's interest in the firm of Sargent & Dixwell, prepared and filed in the clerk's office of Scott County,

Iowa, by George L. Davenport & J. Wilson Drury, assignees of the persons above-named, and also certified copies of the other papers relating to said assignment and the execution thereof, filed in the office of said clerk of Scott County, Iowa, all certified by the clerk of the district court of Scott County, Iowa.

Sixth. The exhibits and papers recertified by the recorder of Scott County, Iowa, pursuant to the order of this court, made herein on the 29th of October, 1864, and in said order set out and described.

And on the hearing of the said application the court granted the same, and gave leave to complainant's solicitor to read on the hearing the said above-described exhibits and each and every thereof.

And it is also ordered by the court that all exbits filed by the parties, prior to this term of this court, be read on the hearing hereof, reserving, however, all rights to the parties to object to the same
687 in whole or in part when offered for immateriality, or irrelevancy to the issue.

688 Exhibits to be filed as of before the record of these orders.

(Indorsed:) No. 25, eq. May vs. Le Claire. Order.
Filed May 19, '65.

WOODWARD, *Clerk.*

689 No. 14.

JAMES MAY
vs.
A. LE CLAIRE'S EXECUTORS & OTHERS. } In chancery.

This cause came on to be herd upon the bill, answers, exhibits, & testimony, and was fully argued by council, whereupon, by consent of council for both complainants & defendants the court took the same under advisement, and it is agreed by council for the respective parties that the decree may be entered by the clerk as of the present term; the same being certified to said clerk by the judge by whom the cause was herd.

OCT., 1865.

690 No. 15.

In circuit court of U. S. States for Iowa.

JAMES MAY
vs.
GEO. L. DAVENPORT, MARGARET LE CLAIRE, ex. of Antoine Le Claire, dec'd, Louis C. Dessaint, John P. Cook, Ebenezer Cook, Geo. L. Davenport, et al. } No. 25, equity.

And now comes this cause on for a final hearing upon the pleadings, exhibits, depositions, & proofs offered by the parties, James M. Ellwood, esq., appearing as solisitor for complainant, and Messrs. Putnam & Rogers and C. C. Nourse appearing as solisitors for the several respondents; and after hearing the evidence in the cause, and the arguments of the solisitors respectively, the court being fully advised in the premices, finds that upon the several allegations of complainant's

bill, ammended bills, & bill of revivor, upon the issues joined therein, the same are not sustained by the evidence, and that the equities of the cause are with the respondants. It is therefore ordered, considered, & adjudged that the bill of complainant, with the several amendments, and bill of revivor, be dismissed, and that the complainant take nothing by his suit, and that the respondants have and recover of James May,
691 the complainant, his costs in this behalf expended, and taxed dollars, and that execution issue therefor.

J. M. LOVE, *Judge.*

692 7.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—

1st. Def'ts' exceptions to deposition of George A. Parker, R. D. Congdon, Adrian H. Davenport, George Wilson, Joseph A. Le Claire, Dennis Navin, J. W. Harrison, Jas. Thorington, Louis C. Dessaint, Geo. L. Davenport, Margarett Le Claire, Joseph A. Le Claire, Adrian H. Davenport, George Wilson, Harvey Leonard, John T. King.

2d. Def'ts' special exceptions to depos'ns of John T. King, Geo. H. Parker, Charles Powers.

3d. Def'ts' exception & motion to suppress depositions of Geo. L. Davenport & Geo. H. Parker, & affidavit therefor.

4th. Exceptions of def'ts to, & motion to suppress, depos'ns of G. H. Parker, R. D. Congdon, A. H. Davenport, Geo. Wilson, Dennis
693 Navin, J. W. Harrison, Jas. Thorington, & Jos. A. Le Claire.

5th. To exclude depos'n of Ch's Powers.

6th. Complainant's motion to suppress parts of depos'ns of Geo. L. Davenport, of Louis C. Dessaint, Jos. A. Le Claire, Dennis Navin, to exhibits.

7th. Def'ts' exceptions to taking depos'ns of Margaret Le Claire, Jos. A. Le Claire, Jas. Lindsey, & Harvey Leonard, on part of complainant.

6th is complainant's exceptions to parts of several of def'ts' depositions.

W. G. WOODWARD, *Clerk.*

694 No. 1.

Circuit court of the U. S. for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'C'R, & MARGUERITE Le Claire, ex'xc'r'x, of Antoine Le Claire, dec'd, & als. } In equity.

The defendants, George L. Davenport & Marguerite Le Claire, as executor & executrix of Antoine Le Claire, dec'd, & also in their own right, except to the portions of the depositions taken on behalf of the complainant herein, hereinafter specified, and move the court that the same

be excluded and suppressed for the reasons hereinafter assigned as to such portions, respectively, to wit:

1st. In the deposition of George H. Parker, taken before R. Linderman, special examiner, January 12th, 1864, direct interrogatories Nos. 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 26½, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 41, 42, 43, 44, 46, 48, 52, 53, 54, 56, 57, 58, 59, 60, 62, 63, 64, 65, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, and the answers thereto, and the exhibits referred to in said answers, and annexed to said deposition, for the reasons respectively assigned as to each of said interrogatories, answers, and exhibits, for objecting to the same at the time of the taking of said deposition, and appearing upon the face thereof.

695 2d. And the said defendants further except to and move to suppress and exclude in the deposition of R. D. Congdon, taken before R. Linderman, examiner, direct interrogatories Nos. 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 29, 30, 38, 39, 40, 41, 42, 49, 52, 53, 54, 61, 62, 76, 77, 78, 79, 80, 81, 82, 83, 89, 90, 91, 98, and the answers thereto, respectively; also Exhibits "D," "E," "M," & "N," annexed to said deposition and referred to in interrogatories Nos. 33, 97½, & 98, respectively, for the reasons respectively assigned as to each of said interrogatories, answers, and exhibits, for objecting to the same at the time of the taking of said deposition, and [and] appearing upon the face thereof.

3d. And said defendants further except to, and move to suppress & exclude in the deposition of Adrian H. Davenport, taken before R. Linderman, examiner, direct interrogatories Nos. 5, 6, 7, 8, 9, 10, 14, 17, 23, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 53, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 77, 78, 79, 80, 81, 84, 86, 87, 88, 89, 90, 91, 92, and the answers thereto, respectively, and Exhibits "F," "G," "H," "I," "J," "K," & "L," annexed to said deposition, and referred to in direct interrogatories Nos. 11, 12, & 86, respectively; also re-direct interrogatories Nos. 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 21½, 22, 23, and the answers thereto, respectively; and also Exhibit "O," annexed to said deposition, and referred to in re-direct interrogatory No. 18, for the reasons respectively assigned as to each of said interrogatories, answers, and exhibits, for ob-

696 jecting to the same at the time of the taking said deposition, and appearing upon the face thereof.

4th. And said defendants further except to, and move to suppress & exclude in the deposition of George Wilson, taken before R. Linderman, commissioner, direct interrogatories Nos. 6, 11, 12, 13, 14, 19, 27, 30, 32, 35, 37, 39, 40, and the answers thereto respectively; also re-direct interrogatories Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, and the answers thereto, re-respectively, for the reasons assigned respectively as to each of said interrogatories and answers for objecting to the same at the time of taking said deposition and appearing upon the face thereof.

3d. And said defendants further except to, and move to suppress in the deposition of Joseph A. Le Claire, taken before R. Linderman, examiner, direct interrogatories Nos. 11, 15, 16, 17, 18, 19, 20, 21, 33, 42, 45, 46, 47, 48, 49, 50, 51, 51½, 52, 53, 54, 55, 56, 57, 58, 61, 62, 63, 64, 65, 66, 72, 73, 76, 78, 79, 80, 81, 82, 83, 92, 93, 94, 95, 96, 97, 98, 100, 105, 106, 107, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 158, 160, 161, 162, 163, 164, 165, 166, 169, 170, 171, 172, 173, 174, 175, 176, 178, 179, 180, 181, 182, 183, 184, 185, 186, 188, 189, 190, 191, 192, 193, 194, 195, 196, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209,

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697 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 239, 240, 241, 242,
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and the answers thereto respectively; also to Exhibit "Q" attached to said deposition, for the reasons respectively assigned as to each of said interrogatories, answers, & exhibits for objecting to the same at the time of taking said deposition, and appearing on the face thereof. And said executor and executrix of Antoine Le Claire, dec'd, further except to and move to suppress said interrogatories & answers so far as relating to matters transpiring before the death of said Antoine Le Claire, because as to such matters, said Joseph A. Le Claire being a party defendant, and interested herein, is not a competent witness against said executor & executrix.

6th. And said defendants further except to, and move to suppress in the deposition of Dennis Navin, taken before R. Linderman, examiner, direct interrogatories Nos. 7, 16, 17, and the answers thereto, and last clause of the answer to the 5th interrogatory; also re-direct in-
698 terrogatories Nos. 6, 11, 12, and the answers thereto respectively, for the reasons respectively assigned as to each of said interrogatories and answers, for objecting thereto at the time of taking said deposition and appearing on the face thereof.

7th. And the said defendants further except to, and move to suppress in the deposition of J. W. Harrison, taken before R. Linderman, examiner, direct interrogatories Nos. 4, 5, 6, 7, 9, 10, 12, 14, 17, 19, 20, and the answers thereto respectively, and Exhibit "R" attached to said deposition and referred to in direct interrogatory No. 5, for the reasons respectively assigned for objecting to said interrogatories, answers, and exhibit at the time of taking said deposition & appearing on the face thereof.

8th. And these defendants further except to, and move to suppress in the deposition of James Thorington, taken before R. Linderman, examiner, direct interrogatories Nos. 9, 13, 17, 19, 20; also re-direct indirect interrogatory No. 3, and the answers thereto respectively; also Exhibits "S" & "T" attached to said deposition and referred to in direct interrogatories Nos. 8 & 19, respectively, for the reasons respectively assigned for objecting to said interrogatories, answers, and exhibits at the time of taking said deposition and appearing on the face thereof.

9th. And these defendants further except to, and move to suppress in the deposition of Louis C. Dessaint, taken before R. Linderman,
699 commissioner, direct interrogatories Nos. 13, 14, 15, 16, 17, 18, 19, 21, 22, 43, 51, 57, 58, 59, 61, 62, 63, 88, 89, 90, 91, 98, 100, 101, 102, 104, 105, 107, 108, 111, 112, 129, 141, 142, 171, 190, 193, 194, 201, 204, 207, 208, 209, 247, 248, 254, 267, 268, 279, 280, 281, 282, 283, 284, 290, 291, 293, [293,] 294, 295, 297, 298, 299, 300, 301, 302, 303, 304, 306, 307, 310, 318, 319, 320, 321, and the answers thereto respectively, and the exhibits referred to in said answers; also re-direct interrogatories Nos. 5, 23, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 56, 58, 59, 60, 61, 62, 63, 70, 73, 80, 81, 82, 87, 88, 89, 90, 91, 92, 93, 94, 97, 98, and the answers thereto respectively; also to interrogatories

on second re-direct examination Nos. 15, and the answer thereto; also to Exhibit "U" attached to said deposition & referred to in direct interrogatory No. 77, for the reasons respectively assigned for objecting to said interrogatories, answers, & exhibits at the time of taking said deposition and appearing on the face thereof.

10th. And these defendants further except to, and move to suppress in deposition of George L. Davenport, taken before R. Linderman, examiner, March 10th, 1864, direct interrogatories Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 69, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138,
139, 140, 141, 142, 143, 144, 150, 151, 152, 153, 158, 169, answer
700 to 171, interrogatories Nos. 175, 177, 178, 179, 180, 181, answer
to 182, interrogatories Nos. 184, 185, 191, 192, 193, 194, 195, 196, 197, 199, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 236, 237, 238, 239, 240, 241, 242, 244, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 272, 273, 274, 276, 281, 282, 283, 284, 285, 287, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 329; answer to 337; interrogatories Nos. 338, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 377, 378, 379, 380, 382, 383, 384, 385, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 398, 399, 401, 402, 403, 404, 405, 406, 407, 409, 410, 411, 412, 413, 417, 418, 419, 421, 422, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 440, 441, 444, 445, 453, 465, 483, 485, 489, 490, 496, 497, 498, 499, 500, 501, 502, 504, 505, 506, 508, 509, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 525, 527, and the answers thereto respectively, and the exhibits referred to in said answers; also re-direct interrogatories Nos. 1, 2, 4, 5, 6, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 87, 88, 89, 90, 91, 92, 93, 96, 106, 107, 109, 111, 113, 114, 115, 116, 117, 118, 119,
120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133,
701 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147,
148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 181, 185, 197, 200, 201, 208, 209, 211, 213, 216, 218, 219, 220, 221, 222, 223, 226, 231, 240, 255, 256, 257, 258, 260, 261, 262, and the answers thereto respectively, and the exhibits referred to in said answers, for the reasons respectively assigned for objecting to said interrogatories, answers, and exhibits at the time of taking said deposition and appearing upon the face thereof.

11th. And these defendants further except to, and move to suppress in the deposition of Marguerite Le Claire, taken before R. D. Congdon, commissioner, March 24th, 1863, interrogatories Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and the answers thereto, for the reasons heretofore assigned in writing for objecting to said interrogatories respectively, & filed herein December 6, 1862, which are hereby referred to for greater certainty.

12th. And these defendants further except to, and move to suppress in the deposition of Joseph A. Le Claire, taken before R. D. Congdon, commissioner, March 24th & 25th, 1863, interrogatories Nos. 3, 4, 5, 6,

7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, & 25, & the answers thereto respectively, for the reasons heretofore assigned in writing, & filed herein December 6, 1862, for objecting to said interrogatories which are hereby referred to for greater certainty.

13th. And these defendants further except and move to sup-
702 press in the deposition of Adrian H. Davenport, taken before R. D. Congdon, commissioner, April 2d, 1863, to direct interrogatories Nos. 3, 4, 5, 6, 7, for the reasons heretofore assigned in writing for objecting to said interrogatories, and filed herein December 6, 1862, which are hereby referred to for greater certainty.

14th. And these defendants further except to, and move to suppress in the deposition of George Wilson, taken before R. D. Congdon, commissioner, March 25th, 1863, to interrogatories Nos. 4, 5, & 6, and the answers thereto, for the reasons heretofore assigned in writing and filed herein December 6th, 1862, for objecting to said interrogatories, which are hereby referred to for greater certainty.

15th. And these defendants further except to, and move to suppress in the (2d) deposition of Marguerite Le Claire, taken before R. D. Congdon, commissioner, May 1, 1863, direct interrogatories Nos. 3, 4, 5, 6, & 7, and the answers thereto, for the reasons heretofore assigned in writing for objecting to said interrogatories, which reasons are attached to the commission under which said deposition was taken.

16th. And these defendants further except to, and move to suppress in the (2d) deposition of Joseph A. Le Claire, taken before R. D. Congdon, commissioner, May 1st, 1863, direct interrogatories Nos. 1, 2, 3,
703 4, 5, & 6, and the answers thereto, as leading, immaterial, & frivilous.

17th. And these defendants further except to, and move to suppess in the deposition of Harvey Leanard, taken May 1st, 1863, before R. D. Congdon, commissioner, direct interrogatories Nos. 1 & 2, and the answers thereto, as leading, immaterial, vague, indefinite, and incompetent.

18th. And these defendants further except to, and move to suppress in the deposition of John T. King, taken before J. L. Rice, commissioner—

1st. The following parts of the answer to direct interrogatory No. 5, beginning with the words, "I believe it was on that date," &c., down to including the words, "as a notary public," because the same is not responsive to the interrogatory & consists of parol evidence of the contents of a writing, & as such is incompetent.

2d. All of the answer to direct interrogatory No 6, because the same consists of conversations at which none of these defendants were present, and which are not evidence against them.

3d. All of the answer to direct interrogatory No. 6, except the following passages therein, viz: "I do know it was so advertized by Chas. Powers as trustee;" "I then went to the Le Claire House & found Capt. May & Mr. Gallaher," &c., down to including the words, "Mr. Powers,"
"bookeeper, stepped in for a moment;" "The plaintiff did not
704 say much," &c., down to the end of said answer; because said parts objected to are in no way responsive or relevant to the interrogatory, & these defendants have had no opportunity of cross-exmining the witness in relation thereto, and because the same consists of conversations & statements which are not evidence against these defendants or any of them, they not having been present thereat.

4th. All of that part of the answer to direct interrogatory No. 7 which states conversations between the witness & Charles Powers; because such conversations are not evidence against these defendants, nor any of them, they not having been present thereat.

5th. All of the answer to direct interrogatory No 8; because the conversations enquired about & stated in said answer are not competent evidence against these defendants, nor any of them, they not having been present thereat.

19th. And the defendant George L. Davenport, in his own right, excepts to and moves to suppress & exclude the following parts of the deposition of Charles Powers, taken in a cause of George L. Davenport vs. James May, in the district court of Scott County, Iowa, before William Hall, notary public; said deposition having been ordered to be read in evidence, (subject to all exceptions as to the competency of its contents,) as against said Davenport alone, viz:

1st. The answer to the 9th interrogatory, because said answer
705 is not responsive to the interrogatory & because it consists of statements of the witnesses' opinion or inferences, and not of facts.

2d. The answers to the 54th & 55th interrogatories for the same reasons as are assigned for objecting to the ninth answer.

3d. The answer to the 67th interrogatory, because the same consists of statements of inferences or understanding of the witness, & of oral statements or declarations made to him by the plaintiff, which are not competent evidence against these defendants.

4th. The answers to the 69th & 70th interrogatories, because the same consists of statements of the witnesses' inferences from conversations which are not themselves stated.

5th. The answer to the 76th interrogatory, because it consists of a mere statement of opinion on the part of the witness & not of any fact, so far as responsive to the question & as to the remainder, because it is not responsive.

And these defendants make the above exceptions to portions of said several depositions, not waiving thereby but expressly saving their motion to suppress sundry of said depositions in toto.

(Signed) JOHN N. ROGERS,
Sol'r for said Def'ts.

706 (Indorsed:) U. S. circuit court, district of Iowa. James May vs. George L. Davenport, ex'c'r of A. Le Claire & als. No. 25, in equity. Def'ts' exceptions to parts pl'ff's depositions.

Filed Jan. 26, 1864.

W. G. WOODWARD,
Clerk C. C. U. S.

Jno. N. Rogers, def'ts' sol'r.

707 No. 2.

Circuit court of the United States for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERITE LE CLAIRE, ex'rs, &c., & als. } October term, 1863, in equity.

The defendants George L. Davenport & Marguerite Le Claire, ex'r & executrix of the last will of Antoine Le Claire, dec'd; the same, defendants in their own right, & the defendants John P. Cook, Ebenezer Cook, & Louis C. Dessaint, except to these parts of the depositions taken

herein on behalf of complainant, hereinafter specified, move that the same be suppressed, for the reasons hereinafter specified respectively as to each portion so excepted to, to wit:

1st. The following parts of the answer to direct interrogatory No. 5 in the deposition of John T. King, to wit, beginning with the words, "I believe it was on that date," &c., down to & including the words "as a notary public," because the same is not responsive to the interrogatory, & consists of parole evidence of the contents of a written instrument & as such is incompetent.

2nd. All the answer to direct int. No. 6 in said deposition of John T. King, except the following passages viz: "I do know it was so advertised by Charles Powers, as trustee;" "I then went to the Le Claire House & found Capt. May & Mr. Gallagher," &c., down to & including the words, "Mr. Powers' book-keeper steped in for a moment;"
708 "The plantiff did not say much," &c., down to the end of said answer, because the said parts objected to are no way responsive or relevant to the interrogatory & consists of conversations & statements which are not evidence against the defendants, or any of them, they not having been present thereat.

3. All that part of the answer of John T. King to the 7th direct interrogatory to him which states conversations between the witness & Ch's Powers, because such conversations are not competent evidence against these defendants, they not being present thereat.

4th. All of the answer to direct int. No. 8, to said John T. King, because the conversations enquired about and stated in said answer are not competent evidence against these defendants, or any of them, they not having been present thereat.

5. These defendants further object to & move to suppress (in case the whole deposition shall not be suppressed upon the motion therefor heretofore filed, which is not intended to be waived hereby) the following portions of the deposition of George H. Parker, on file herein & purporting to be taken in a suit in the district court of the United States for the district of Iowa, southern division, viz: 1st. The answers to interrogatories 3 & 5 in said deposition, because the same relate to matters evidenced by record or documentary proof as to which parole evi-
709 dence is not competent. 2nd. The answer to interrogatory No. 7 in said deposition, because the same consists of irrelevant & immaterial matter & conversations or oral declarations not evidence against these defenants.

6th. These defendants further object to, & move to suppress (in case the whole deposition shall not be suppressed upon their motion filed therefor, which is not intended to be waived hereby) the following portions of the deposition of Charles Powers taken in a suit of George L. Davenport against James May in the district court of Scott County, Iowa, of which a certified copy is on file herein to wit: 1st. The answer to the 9th interrogatory in said deposition, because said answer is not responsive to the interrogatory & because it consists of statements of the witness' opinions or inferences, not of facts. 2nd. The answers to the 54th & 55th interrogatories in said deposition for the same reasons as are assigned for the last preceding objection. 3rd. The answer to the 67th interrogatory in said deposition, because the same consists of statements of the inferences or understanding of the witness & of oral statements or declarations made to him by the plantiff, which are not competent evidence against these defendants.

4th. The answers to the 69th, 70th, & 71st interrogatories in [in] said deposition, because the same consists of statements of the witness'

inferences from conversations, which are not themselves stated.

710 5th. The answer to the 76th interrogatory in said deposition, because it consists of a mere statement of opinion on the part of the witness & not of any fact, so far as responsive to the question, and as to the remainder because it is not responsive.

JNO. N. ROGERS,
Sol'r for said Defendants.

(Indorsed :) No. 25. U. S. circuit court, district of Iowa. James May vs. Geo. L. Davenport & al., execu., &c., & als. Motion to exclude parts of p't'ff's depositions.

Filed Oct. 23, 1863.

W. G. WOODWARD, *Clerk, &c.*

This motion is continued.

J. M. LOVE.

Jno. N. Rogers, sol'r for def'ts.

711 No. 3.

Circuit court of the United States for the district of Iowa.

JAMES MAY *vs.* GEORGE S. DAVENPORT & [ET] AL., EX'RI. OF Antoine Le Claire, dec'd, & als.	Oct. term, 1863, in equity.

Now came the defendants, George L. Davenport, Margurite Le Claire, executors of Antoine Le Claire, dec'd, Louis C. Dessant, Ebenezer Cook, & John P. Cook, move the court to suppress the depositions of George L. Davenport & George H. Parker, filed in this cause October 21st, 1863, for the following reasons & upon the affidavit hereto annexed.

1st. The day on which said depositions were taken was too late to permit if said defendants' consel, when the notice of taking the same was served, to attend at said taking, without being prevented from being in attendance at this court upon the first day of the term, as provided by law.

2nd. No reasons for taking said depositions de bene esse are stated in the notice of taking the same.

712 3rd. Said depositions do not purport to be taken in this cause but in annother cause in the district court of the United States for this district.

JOHN N. ROGERS,
Solicitor for said Def'ts.

713 Circuit court of the United States for the district of Iowa.

JAMES MAY *vs.* GEORGE L. DAVENPORT & [ET] AL., EXECUtors of Antoine Le Claire, dece'd, & [et] als.	In equity.

UNITED STATES OF AMERICA, *District of Iowa, ss :*

I, John N. Rogers, being duly sworn, say that I am solicitor & sole counsel in this cause for the defendants George L. Davenport & Mar-

guretia Le Claire, executors of Antoine Le Claire, dec'd, in their own right, and also for defendants, & defendants John P. Cook, Ebenezer Cook, and Louis C. Dessaint; that I reside at Davenport, in Scott County, in this district; and that I was served at that place, on Friday, the 16th inst., about 10 o'clock p. m., with the notice of the taking of the depositions of George L. Davenport & others, de bene esse, before R. Linderman, county judge of Scott County, at said Davenport, on Monday the 19th of October, instant, at 8 o'clock a. m., in a certain cause stated in said notice to be pending in the district court of the
714 United States for the district of Iowa, southern division, of James May vs. George L. Davenport, Margurita Le Claire, executors of the last will, &c., of Antoine Le Claire, & al., being the same notice attached to the deposition of George L. Davenport and George H. Parker, filed this day in this cause.

I further say that in order to be present at this court on the first day of the term, as provide by law, & on which, I, in good faith, supposed the court would actually be oppened, it was necessary for me to leave Davenport by the train which left there at five o'clock a. m., on said 19th day of October, and I had already made my arrangements so to do when served with the said notice; that I so notified the said county judge of my said intention, & of the impossibility of my attending at the taking of said depositions, remonstrating against their being taken; also calling his attention to the fact that the notice was entitled in a suit in the district court, and that I knew of no such suit; also that the notice was defective in not stating any reason for taking the depositions as provided by law. I further say that I did in fact leave Davenport as
715 aforesaid at 5 o'clock a. m. on said 19th inst., October, to attend this court in good faith, & supposing it to be necessary for me to do so in order to be present at the opening thereof. I further state that I had no notice or knowledge of any kind that an application would be or had been made in this cause, for extending the time for taking testimony therein beyond the 1st of September last, (to which time it was exented at the last term of this court,) or that any order had been made for such extension untill the evening of the 14th day of October, instant; that the plaintiff took no steps whatever since said last term of the court to take any further testimony until the giving of said notice.

J. N. ROGERS.

Subscribed & sworn to before me this 21st day of October, 1863.

W. G. WOODWARD,
Clerk C. C. U. S.

716 No. 4.

Circuit court of the United States for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EXECUTOR, & MARguerite Le Claire, executrix, &c., of Antoine Le Claire, dec'd, & als. } In equity.

The defendants George L. Davenport and Marguerite Le Claire, as executor & executrix of the last will of Antoine Le Claire, dec'd, and also in their own right, John P. Cook, Ebenezer Cook, & Louis C. Dessaint, except to the following named depositions taken herein on behalf

of the complainant and move the court to suppress the same, for the several reasons hereinafter specified as to said depositions respectively, to wit:

The depositions of George H. Parker, R. D. Congdon, Adrian H. Davenport, George Wilson, Dennis Navin, Isaac W. Harrison, James Thorington, and Joseph A. Le Claire, taken before Rufus Linderman, special examiner for the following reasons, to wit:

1st. Because the depositions of numerous witnesses had already been taken in the cause by the complainant, on commission and written interrogatories, before the taking of said first-named depositions and are now on file therein; and because said first-named depositions were taken without any commission issued for the purpose, and on oral interrogatories, without the consent & against the objection of these defendants, and because there is no law or rule authorizing the taking of depositions on oral interrogatories under such circumstances, the general rule adopted by the Supreme Court, Dec. term, 1861, being prospective only and requiring all the evidence in the cause to be taken under its provisions, if any is so taken.

717

2d. Because no notice was given by either party to the other, that such party desired the evidence to be adduced in the cause to be taken orally, (as required by the general rule in equity prescribed by the Supreme Court at the December term, 1861,) prior to the commencement of the taking of said depositions.

3d. (As to the depositions of said Adrian H. Davenport, George Wilson, & Joseph A. Le Claire,) because the depositions of said witnesses had been previously taken in the cause by the complainant, on written interrogatories, & no leave of the court had been obtained for re-examining said witnesses.

And said defendants further except to, and move to suppress, the depositions of George L. Davenport and Louis C. Dessaint, taken before Rufus Linderman, special examiner—

718 1st. For the same reasons first assigned hereinbefore, as ground of objection to the above-named depositions of George H. Parker & others.

JNO. N. ROGERS,
Sol'r for said Defendants.

719 (Indorsed:) U. S. circuit court, district of Iowa. James May vs. George L. Davenport, exe'r of A. Le Claire & als. No. 25. Motion to suppress certain of pl'tiff's depositions.

Filed Jan. 26, 1865.

W. G. WOODWARD,
Clerk C. C. U. S.

Jno. N. Rogers, def'ts' sol'r.

720 No. 5.

Circuit court of the United States for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGURITE LE Claire, exec'r & exec'x of Antoine Le Claire, dec'd, & als. } October, 1863, in equity.

The defendants, Georg L. Davenport & Margureta Le Claire, executor

& executrix of the last will of Antoine Le Claire, dec'd, & in their own right, John P. Cook, Ebenezer Cook, & Louis C. Dessaint, move to suppress & exclude the deposition of Charles Powers, taken in a certain suit in [in] the district court of Scott County, Iowa, between George L. Davenport, plaintiff, and James May, defendant, and a certified copy thereof, filed herein by said complainant May.

1st. Because the said deposition was not taken in this cause, but in another cause to which none of these defendants (except said George L. Davenport, in his own right) were parties, & in which the issues were not the same as in the present cause.

721 2nd. Because said depositions was improperly & irregularly taken, & could not have been read in evidence in the cause in which it was taken, it not appearing therefrom that any of the grounds provided by law, as cause for taking the same, existed.

3rd. Because no notice of the taking of said depositions appears to have been given to said George L. Davenport, or his attorneys in said suit; nor does it sufficiently appear that such notice was waived.

JNO. N. ROGERS,
Sol'r for said Def'ts.

722 No. 6.

U. S. circuit court, district of Iowa.

JAMES MAY, COMPL'T,
vs.
GEO. L. DAVENPORT & OTHERS, & GEO. L. Davenport and Marguerite Le Claire, ex'c'rs of Antoine Le Claire, dec'd, def'ts.

The complainant comes and excepts to the following parts and portions of the depositions taken in this cause, and moves to suppress and exclude the same, on the grounds and for the reasons & objections stated, to such parts of said depositions at the time they were taken, and appearing in said depositions at the time they were taken, as certified by the special commissioner taking the same.

First. The following parts and portions of the deposition of George L. Davenport:

1. Ans. to direct interrogatory 129
2. " " " " 133
3. " " " " 177
6. " " " " 204
7. " " " " 241
8. " " " " 255
9. The last paragraph to ans. to direct int 308
10. The first " " " " " " 369
11. All after the words "I do," in first line of ans. to direct int 370

723 The above answers and parts of answers excepted to were objected to on the taking of the deposition, as will appear by reference to said deposition, and they are now objected & excepted to for the same reason.

Second. The complainant excepts to the following interrogatories and answers put to the witness, Geo. L. Davenport, on his cross-ex. by def'ts' solicitor:

Cross-interrogatory 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 21,

22, 24, 27, 28, 31, 33, 35, 36, 37, 38, 39, 40, 42, 43, 44, 45, 46, 47, 48, 49, 50, 52, 54, 62, 63, 64, 65, 66, 67, 68, 69, 72, 81, 82.

And also to those parts and portions of the answers to cross-interrogatories 15, 41, 47, 65, & 75, which were objected to at the time of taking the depositions, and at the time answers were made.

All the above cross-int. & answers, & parts of answers, were objected to by complainant at the time of taking the said deposition, and at the time the interrogatories were put & the answers given, for the reasons stated in the said deposition, and he now excepts to the same for the same reason.

Third. The complainant also excepts to the answer & parts of answers to the following numbered interrogatories put to the said Geo. L. Davenport on his re-examination by complainant:

1. All that part of the answer to int. 27 which gives the declaration of Cook & Sargent, & which is not responsive to the interrogatory.

724 All that part of the answer to int. 35 after the word "not" in the first line.

All that part of the ans. to interrogatory 53 after the word "large" in the first line.

All that part of the ans. to interrogatory 60 after the word "county" in the 3d line.

Answers to interrogatories 103 & 104.

Answer to int. 117.

All that part of the answer to interrogatory 129 after the word "all" in the first line.

All that part of the answer to interrogatory 183 after the word "possession" in 4th line.

The answer to interrogatory 219.

To all that part of the answer to int. 221 not responsive to the interrogatory.

The ground of exception to the above answers and parts of answers to interrogatories put to the witness Geo. L. Davenport, on his re-examination, were objected to at the time they were given, as not being responsive to the interrogatories, & they are now excepted to for that reason.

725 Fourth. The complainant also excepts to the following interrogatories, put to said Geo. L. Davenport on his re-cross-exm. by def'ts' sol'rs, and the answers thereto, to wit:

Interrogatories 83, 84, 85.

For the same reasons urged to said interrogatories & answers, at the time the interrogatories were put and the answers made, as appears from the depositions returned by the com'rsr.

Fifth. And the said complainant also excepts to the following parts and portions of the deposition of the defendant Louis C. Dessaint, and moves the court to suppress the same:

1. The answer to direct interrogatory 21.
2. All that part of ans. to D. interrog. 91 after the word "me" in first line.
3. All that part of ans. to D. int. 127 after the word "Sargent."
4. All that part of ans. to D. int. 128 after the word "writing" in 3d line.

5. All after the word "credit" in the 3d line of the ans. to D. int. 151.
6. All after the word "dates" in the answer to direct interrogatory 168.
7. All after the word "parties" in the answer to direct interrog. 210.
8. The answer to direct int. 255.
9. All after the word "place" in the answer to direct int. 290.

726 Sixth. The complainant also excepts to the following interrogatories, put to the witness Louis C. Dessaint, by the def'ts' sol'r, and the answers thereto, to wit:

Cross-int ..... 1, and ans. to same.
" " ..... 2, " " " "
" " ..... 3, " " " "
" " ..... 4, " " " "
" " ..... 5, " " " "
" " ..... 6, " " " "
" " ..... 7, " " " "
" " ..... 8, " " " "
Part of ans. to ..... 8 cross-int.
Cross-int ..... 12, & ans. to same.
" " ..... 13, " " "
" " ..... 14, " " "
" " ..... 15, " " "
All that part of answer of witness to 16th cross-int. which details conversation between him and his mother-in-law.
Cross-interrog ..... 18, and ans. to same.
" " ..... 19, " " " "
" " ..... 20, " " " "
" " ..... 21, " " " "
All that part of ans. to cross-int. 23 after the word "persons" in the 3d line.
All that part of ans. to cross-int. 23 after the word "bank" in 2d line.
Cross-int ..... 25, & ans. to same.
All that part of ans. to cross-int. 25 after the word "farm" in 3d line.
Cross-int ..... 26, and ans. to same.
" " ..... 27, " " " "
727 Cross-int ..... 28, and ans. to same.
" " ..... 29, " " " "
" " ..... 32, " " " "
" " ..... 33, " " " "
" " ..... 34, " " " "
To all the parts of ans. to C. int. 34 objected to at the time the same was made & given.
Cross-int ..... 36, and ans. to same.
" " ..... 40, " " " "
" " ..... 42, " " " "
" " ..... 43, " " " "
Ans. to cross-int ..... 47.
Cross-int ..... 51, and ans. to same.
" " ..... 52, " " " "
" " ..... 53, " " " "
" " ..... 55, " " " "
" " ..... 57, " " " "
All after the word "Le Claire" in 4th line of ans. to cross-int. 58.

The above are excepted to for the reasons urged by complainant at the time interrogatories were put & answers given.

Seventh. The complainant also excepts to the following parts & portions of the deposition of said L. C. Dessaint on his re-examination by complainant:

All after the word "check" in 2d line of the ans. to int. 12.
All after the word "State" of the ans. to 16 int.
728 The ans. to int. 25.
All after the word "was" in the first line of ans. to int. 37.
All of answer to int. 44 after end of first line.
All of ans. to int. 48 after the word time in 3d line.
All of the ans. to int. 54 after the words "about it" in second line.
All of the ans. to 58 int. after the end of 3d line.
All of the ans. to int. 72 after the end of 2d line.
All of the ans. to int. 75 after the word "it" in the first line.
All of the " to int. 77 after word sale in 3d line.
All of the ans. to int. 80.
All of the ans. to int. 82.
All of ans. to int. 87 after the word "was" in first line.
All of ans. to int. 91 after word "it" in 2nd line.
All of ans. to int. 92.

The above are excepted to for the reasons urged & stated by complainant at the time the interrogatories were put and answers given.

Eighth. The complainant also excepts to the following parts and portions of the deposition of said Louis C. Dessaint on his second cross-exam'n by def'ts' sol'r:

Ans. to int. 46.
Ans. to int. 47.
C. interrogatories 51, 52, 53, 54, 55, 57, and the answers thereto.
All of ans. to int. 58 before the word "Le Claire" in the 4th line.

The above are excepted to for the reasons given at the time the interrogatories were put and the answers given.

729 Ninth. The complainant also excepts to the following parts & portions of the depo't'n of said Louis C. Dessaint on his second re-examination:

All that part of ans. to int. 5 not responsive to int.
All of ans. to int. 7 after the word "positively" in first line.

Tenth. The complainant also excepts to the following parts & portions of the deposition of Joseph A. Le Claire, to wit:

All of ans. to int. 196 on his direct exam'n.
All of ans. to int. 200 on " " " after the word "remember" in first line.
All of ans. to int. 363, direct ex'n, except the last paragraph.

Eleventh. The complainant also excepts to the following portions of the deposition of said Joseph A. Le Claire in his cross-examination by def'ts' solicitor:

Cross-int. 12, and the answer thereto, as immaterial and giving hearsay and not responsive.
Cross-int. 15, and answer to same, as immaterial, irrelevant, & hearsay.
Cross-int. 16, and answer to same, for same reasons as 15.

Cross-int. 17 for same reasons.
Cross-int. 26, & ans. to same, as immaterial & secondary evidence.
Cross-int. 27 & ans., for same reasons.
Cross-int. 43 & ans. thereto.
Cross-int. 51, & ans. to same, on the ground it is hearsay.
" " 55, & ans. to same " " " " " "
" " 56, & ans. to " " " " " " "
" " 59, & ans. to same, as immaterial.
730 Cross-int. 60, & ans. to same, as immaterial.
" " 61, " " " " " "
" " 64, " " " " " "

Twelfth. The complainant also excepts to the following parts & portions of the deposition of the witness Dennis Navin:

Cross-int. 1, 2, 3, 4, 5, 6, & the answers thereto.
" " 7, 8, 9.

All of the foregoing exceptions to depositions are based upon the grounds stated in the depositions themselves, at the time the interrogatories were put, and the answers given, and for the reasons therein stated.

Thirteenth. The complainant also excepts to def'ts' exhibits 19, 20, 21, & 22, being copies of accounts from the books of Cook & Sargent, as entirely immaterial & usless by encumbering the record in this case, and as incompetent evidence epr defendants. (See statement of commissioner following ans. to interrogatory 263, put to witness Davenport, on his re-examination.)

Fourteenth. The complainant also excepts to def'ts' Exhibit "C," being a deed from Antoine Le Claire to L. C. Dessaint, as immaterial and incompetent, and uselessly encumbering the record in this case. Also to def'ts' Exhibit "D," being an agreement from Dessaint to Le Claire, as immaterial, irrelevant, and incompetent.

731 Fifteenth. The complainant also excepts to the exbits of defendants filed in this case, which are or purport to be certified copies of judgements recovered against James May since the date of the agreement between James May & Antoine Le Claire, to wit, March 8, 1859, as immaterial, irrelevant, and incompetent, and as uselessly incumbering the record, except the judgement against James May in favor of John P. Cook, recovered in U. S. circuit court for the northern dist. of Illinois.

D. F. MILLER, *Sol'r.*
J. S. POLK & J. M. ELLWOOD,
Of Counsel.

732 (Indorsed:) James May vs. Ex'rs of Ant. Le Claire & al. Compl't's exceptions to depositions. Feb. 20, 1865. W. G. Woodward, clerk C. C. U. S.

733 *Dedimus potestatum.*

CIRCUIT COURT OF THE UNITED STATES, *District of Iowa, ss:*

To R. D. Congdon, esq., a notary public of Davenport, Scott Co., Iowa:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority, to examine Marguerite Le Claire, Joseph A. Le Claire, James Lindsey, and Harvey Leonard, on their corporal oaths as wit-

nesses in a couse depending in the circuit court of the United States for the district of Iowa, wherein James May is plaintiff and Geo. L. Davenport & Marguerite Le Claire, executors of Antoine Le Claire, deceased, Marguerite Le Claire, & others, are defendants, on the part of the plaintiff, upon the interrogatories annexed to this commission. And, therefore, you are hereby commanded that at certain days and places to be appointed by you for that purpose, you do cause the said Marguerite Le Claire, Joseph A. Le Claire, James Lindsey, and Harvey Leonard to come before you, and there examine them on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying notice and interrogatories and this commission, under your seal, sealed up and endorsed with the names of the parties litigant and the word "Deposition" on the cover thereof, into the said circuit court at Des Moines, Iowa, to the clerk thereof, with all convenient speed.

734 Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 28th day of April, 1863, and in the 87th year of the independence of the United States of America.

{SEAL OF CIR. COURT OF U. S. DISTRICT OF IOWA.} Attest: (Signed) W. G. WOODWARD, *Clerk.*
Deputy.

NOTE.—The person before whom depositions are taken must cause the interrogatories propounded, (whether written or oral,) to be written out, and the answers thereto to be inserted immediately underneath the respective questions. The answers must be in the language, as nearly as practicable, of the witness, if the party require it. The whole, being read over by or to the witness, must be by him subscribed and sworn to in the usual manner. All exhibits produced before the person taking the deposition, or proved or referred to by any witness, or correct copies thereof, must be appended to the depositions and returned with them, unless sufficient reasons be shown for not so doing.

The person taking the deposition shall attach his certificate thereto stating that it was subscribed and sworn to by the deponent at the time and place therein mentioned.

735 No. 7.

Circuit court of the United States in & for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'C'R, & MARguerite Le Claire, ex'cr'x, of the estate of Antoine Le Claire, dec'd, & als. } In equity.

Objections taken by the defendants, George L. Davenport, executor, & Marguerite Le Claire, executrix, of Antoine Le Claire, dec'd, George L. Davenport, Marguerite Le Claire, Louis C. Dessaint, Ebenezer Cook, & John P. Cook, to the issuing of a commission to R. D. Congdon, a notary public of Davenport, Scott County, Iowa, on the 28th day of April, 1863, to take the depositions of Marguerite Le Claire, Joseph A. Le Claire, James Lindsey, & Harvey Leonard, on behalf of the plaintiff in the above-entitled cause, of which notice has been served upon said defendants by said plaintiff, and to the interrogatories to be propounded to said witness on behalf of said plaintiff.

1st. Said defendants object to the issuing of said commission & the

taking of said depositions, or any of them, because the time limited for taking testimony in said cause has already expired.

736 2d. Said defendants further object to the issuing of said commission or the taking of said depositions, or any of them, thereunder, because under the order heretofore made in this cause as to the taking of testimony therein, the depositions of witnesses residing within this State cannot be taken upon commission & written interrogatories, but only upon oral interrogatories.

3d. Said defendants further object to the issuing of said commission to take the depositions of the said Marguerite Le Claire & Joseph A. Le Claire, & to all the interrogatories to be propounded to said witnesses, because the deposition of said witnesses have already been taken by the plaintiff in this cause, & they cannot be re-examined by him therein unless by special leave of the court first had and obtained.

4th. Said defendants further object to each and all of the interrogatories propounded by said plaintiff to Marguerite Le Claire, & particularly to the 3d, 4th, 5th, 6th, & 7th interrogatories, because the said witness has already been examined fully by the plaintiff in her former deposition on the subjects inquired about in said interrogatories, and the above-mentioned interrogatories are an attempt to cross-examine the plaintiff's own witness on the same subject.

5th. [5th.] Said defendants further object to the 3d interrogatory

737 propounded to Marguerite Le Claire as being immaterial.

6th. Said defendants further object to said 4th interrogatory to said Marguerite Le Claire, as calling for the witnesses' understanding as to the ownership of land, which is not competent evidence thereof.

7th. Said defendants further object to the 5th interrogatory to said Marguerite Le Claire as totally irrelevant, immaterial, & frivilous.

8th. Said defendants further object to the 6th interrogatory to Marguerite Le Claire for the same reasons as to the 5th, & also as leading.

9th Said defendants further object to the 7th interrogatory to Marguerite Le Claire for the same reasons as to the 5th, and also as calling for parol evidence of the contents of a written instrument.

10th. Said defendants further object to each and all of the interrogatories propounded to Joseph A. Le Claire, because said witness has already been examined on the same subject or subjects to which said interrogatories refer in his former deposition taken by plaintiff herein, & said interrogatories are an attempt by plaintiff to cross-examine him on the same subject.

738 11th. Said defendants further object to said interrogatories to Joseph A. Le Claire, and especially to the 1st, 2d, 3d, 4th, 5th, & 6th of said interrogatories, as leading, immaterial, & frivilous.

12th. Said defendants further object to the 1st interrogatory to said Harvey Leonard as leading & immaterial.

13th. Said defendants further object to the 2d interrogatory to Harvey Leonard as leading, vague, indefinite, & incompetent, in asking whether Joseph A. Le Claire & Louis C. Dessaint "had something to do with renting or collecting rent of said farm," without asking what, if anything, they had to do with it.

And not waiving any of said objections, but relying & insisting upon each and all of the same, the said defendants propounded the following cross-interrogatories:

(Here follow cross-interrogatories.)

739 *Notice to take depositions, &c.*

In the circuit court of the United States for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERITE LE Claire, executors of Antoine Le Claire, deceased, Marguerite Le Claire, & others. } In chancery.

J. N. ROGERS, Esq., *Att'y for Defendants in said suit.*

SIR: On the 28th day of April, 1863, pl't'ff will sue out of the cl'k's office of said court a commission directed to R. D. Congdon, esq., a notary public, &c., of Davenport, Scott County, Iowa, to take the depositions of Marguerite Le Claire, Joseph A. Le Claire, James Lindsay, & Harvey Leonard, on the interrogatories hereto attached, & such others as you may lawfully propound on cross-examination, to be used as evidence on the hearing of the above-named cause.

Respectfully, yours,

D. F. MILLER, *Att'y for Pl't'ff.*

APRIL 11TH, 1863.

The above served on me by copy this —— day of April, 1863.

(Here follow the interrogatories.)

740 STATE OF IOWA, *Scott County, ss:*

I, Palmer Clark, on oath do say that I served the within notice by offering to read the same to John N. Rogers, who refused to hear it read, and by delivering to him personally a copy of the notice this 11th day of April, A. D. 1863.

P. CLARK.

Subscribed & sworn to before me and in my presence by Palmer Clark this 11th day of April, A. D. 1863.

[SEAL.]

R. D. CONGDON,
Notary Public, Scott Co., Iowa.

(Indorsed:) No. 25, eq. J. May vs. A. Le Claire's adm'rs.

Filed May 8, '63, & opened in court.

WOODWARD, *Clerk C. C.*

Interrogatories to Mrs. Le Claire, Leonard, &c. Notice to take depositions, &c.

741 No. 8.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—

1st. Motion & order to read the deposition of Ch's Powers, and order

to suppress depositions of Geo. L. Davenport & Geo. H. Parker, & to extend the time for taking testimony.
2d. Deposition of Charles Powers.
3d. First do. of Jos. A. Le Claire & resumed.
4th. Depos'n of Harvey Leonard.
5th. Do. of James Lindsey.
6th. First do. of Mrs. Marg't Le Claire.
7th. Do. of Geo. Wilson.
8th. Do. of A. H. Davenport.
9th. Do. of Annie Le Claire.
10th. Do. of John Andoe.
11th. Do. of John T. King.
12th. Objections of def'ts to the depositions of Annie Le Claire & John Andoe, and agreement as to admitting depositions.

742 No. 1.

May term, 1865.

JAMES MAY
vs.
EXECUTORS OF A. LE CLAIRE ET AL.

The heering upon the exceptions of the def'ts' sol'rs to, and their motion to suppress the depositions of Geo. H. Parker & George Wilson, and Adrian H. Davenport, on the ground that they were taken without an order of the court, coming on to be herd, the motion is sustained. But to save a continuance for the purpose of retaking the depositions of the said witnesses, the solistors for the defendants in open court waived said objections, and consented that the said depositions might be read.

And it is therefore ordered that the said depositions of Geo. H. Parker & Geo. Wilson be read on the hearing hereof, subject to all legal and proper objections to spicific interrogatories for incompetency or irrelevancy. And the motion to suppress certain portions of the deposition of John T. King upon exceptions thereto by defendants' solisitors coming on to be herd, the motion is sustained by the court so far as to exclude & suppress all portions of the said deposition so ex-
743 cepted to which are not responsive to and competent under [under] the interrogatories. But to save a continuance of the cause for the purpose of re-taking the deposition of said John T. King, the defendants' solisitors consented that the said deposition of John T. King might be read. And it is therefore ordered that the said deposition of John T. King be read on the hearing of this cause notwithstanding the exceptions thereto, so far as the same would be competent if called out by and responsive to proper interrogatories put to him, subject however to all legal and proper objections on the hearing for incompetency or irrevelancy to the same extent as if the answers of said King had been made and given in direct response to interrogatories calling for said answers.

(Marked:) Agreement to admit depos. of Parker, Davenport, Wilson, & King.

Filed May 19, '65.

WOODWARD, *Clerk.*

I hereby certify the above to be a true & correct copy of the proceedings & order in the above cause & matter.

W. G. WOODWARD,
Clerk Circuit Court U. S., Iowa.

744 Circuit court of the United States in and for the district of Iowa, at the October term thereof, A. D. 1863.

JAMES MAY
vs.
GEO. L. DAVENPORT, ET AL, EXECUTORS, &c., of A. Le Claire, & others. } No. 25, eq.

This cause now coming on to be heard, upon the complainant's motion for leave to read in evidence at the hearing the deposition of Charles Powers, taken in a suit in the district court of Scott County, Iowa, between George L. Davenport as plaintiff, and James May as defendant, & on motion of defendants to exclude the same, and also on the motion of defendants to suppress the depositions of Geo. L. Davenport & George H. Parker, taken herein in behalf of the complainant de bene esse, on the 19th day of October, 1863; upon hearing the argument of counsel for and against said motion, it is now ordered that complainant have leave to read said deposition of Charles Powers in evidence, (subject to all objections to the competency of the matters therein contained,) as against the defendant Geo. L. Davenport in his own right, but not as against any of the other defendants. And it is further ordered that the said depositions of Geo. L. Davenport & Geo. H. Parker be, and they are hereby suppressed. And this cause coming on to be farther heard on the motion of the complainant to extend the time of taking the evidence in this cause, and for an order to take the depositions of Geo. L. Davenport & Louis C. Dessaint, defendants herein, & the court being advised of the matters therein set out, it is thereupon ordered that the time for
745 taking the testimony in this cause be extended to the 1st day of April, 1864, & that complainant have leave to take the depositions of the defendants Geo. L. Davenport & Louis C. Dessaint, to be read in evidence in this cause on the trial thereof.

And it is further ordered that Rufus Linderman, esq., of Davenport, in the county of Scott, State of Iowa, be, and he is hereby, appointed a special commissioner to take the testimony in this cause, at Davenport, in Scott County, Iowa, & that Joseph Snowden, of Pittsburgh, Allegheny County, State of Pennsylvania, be and he is hereby appointed a special commissioner to take testimony in this cause in said county of Allegheny & State of Pennsylvania.

I hereby certify that the foregoing is a full and true copy of an order passed by the circuit court of the United States in and for the district of Iowa, at the October term thereof, A. D. 1863.

In testimony whereof I have hereunto set my hand and the seal of the said circuit court, at Des Moines, this 10th day of November, A. D. 1863.

{ SEAL OF CIR. COURT OF U. S., DIST. OF IOWA. }

W. G. WOODWARD,
Clerk of the said Court.

(Endorsed:) No. 25, eq. James May v. Le Claire's ex'c'rs. Order relating to testimony.

746 No. 2.—*Deposition of Charles Powers.*

State of Iowa, Scott County, ss.—In district court in and for said county.

GEORGE L. DAVENPORT } In chancery.
vs.
JAMES MAY. }

The deposition of Charles Powers, witness in above-entitled cause, produced and sworn on behalf of the defendant and taking before me, William Hall, a notary public in & for said county of Scott, on the 20th day of January, A. D. 1860, in the presence of & with the consent of the attorneys for said parties, plaintiff & defendant. The plaintiff reserving the right to object to the revelancy and admissability of the same, as evidence in said cause and waiving want of legal notice. The defendant claiming the right to perpetuate testimony.

(Signed) WM. HALL, *N. P.*

Charles Powers, being first duly sworn on behalf of said James May, maketh answer to the several interrogatories as follows:

Int. 1st. What is your name, age, residence, & occupation?

Ans. 1st. Charles Powers; aged 31; reside in Davenport; occupation, banker & broker.

Int. 2d. How long have you been engaged in your present business?

Ans. 2d. I have been engaged in my present business in the city of Davenport since the 1st of May, 1856.

747 Int. 3d. Have you at any time within the past three years had any business connection with James May, the defendant, in which the title to the southeast quarter of section No. fourteen, (14,) township No. seventy-eight (78) north, of range three (3) east, of 5th P. M., excepting fifteen $\frac{1}{100}$ ($15\frac{1}{100}$) acres in the west half of said section on the south side of Duck Creek was involved? If so, state particularly what it was.

Ans. 3d. On or about the first day of May, A. D. 1857, Capt. James May executed to me a deed of trust on the farm on which he then lived, known as Rose Bank, which I suppose is the identical property described in the interrogatory, for the purpose of securing a note of the said James May, of that date, for the sum of six thousand five hundred & fifty, ($6,550 00,) with interest at 10 per cent., payable one year after date. By virtue of that deed of trust on the 20th day of July last, according to my present recollection, I sold at public sale at the court-house door in the city of Davenport the above-mentioned premises to Louis C. Dessaint. At the sale I announced that the property would be sold subject to a mortgage on a part of it, upon which there was then due about the sum of ($3,300 00) thirty-three hundred dollars, and that I knew of no other incumbrances upon the property prior to the deed of trust. On or about the 1st day of November, A. D. 1856, prior to this deed of trust, Capt. James May made a note & executed a mortgage to one George F. Kettle on a part of above-described property, about 60 acres of it, for the sum of ($3,125 00) three thousand one hundred & twenty-five dollars, without interest, until after maturity, & to mature in one year, which is the mortgage to which I sold the property subject. The business was transacted through me; I made out the papers and furnished the money.

748 Int. 4th. When did you execute & deliver the deed, in pursuance of the trustee's sale above refered to?

Ans. 4th. I think it was delivered about one or two o'clock in the

afternoon of the day subsequent to the sale; I cannot be particular about the precise time; say about the middle of the next day; I think it was executed the next morning after the sale.

Int. 5th. Was the name of the grantee put in the deed prior to or subsequent to your acknowledgement?

Ans 5th. Prior.

Int. 6th. To whom, in person, was the deed delivered?

Ans. 6th. John P. Cook.

Int. 7th. Did you, at any time previous to the sale of the property as trustee, have any conversation with John P. Cook relative to the name of the purchaser at the sale, or as to how the sale should take place?

Ans. 7th. Soon after my return from New York, a few days before the sale, John P. Cook called upon me at my office, & inquired whether the sale would take place positively; I told him the sale would take place unless the money was paid prior to the time of it. He then enquired the amount of the incumbrance under the deed of trust, & the amount prior to the deed of trust, and whether we proposed bidding on the property; I told him the am'ts, as near as I could estimate them,
749 and that we should bid on the property up to the amount under deed of trust, and no further; Mr. Cook then gave me to understand that there would be bidders there who would bid up to that amount and take the property, and that I need not have bidders there. I had several conversations with Mr. Cook, & he gave me to understand that Mr. Dessaint was desirous of purchasing the property, & would give the amount for it.

Int. 8th. In what capacity did Mr. Cook act, or profess to act?

Ans. 8th. He did not profess to act in any capacity, except as my friend, and as a business man of capital, enquiring as regard to the sale of property, in which his freinds were in some degree interested.

Int. 9th. Did he, in any conversations alluded to by you prior to the sale, state or disclose to you the object or motives which induced him to make the inquirys? If so, state what.

Ans. 9th. I inferred and understood, from what Mr. Cook said, that his special interest in the matter was as friend of, & counsel for, one Antoine Le Claire, who had a claim upon this same property under an agreement made the spring before with Capt. May, which agreement Mr. Cook appeared to be extremely anxious to break up.

Int. 10th. Did he claim to act as the attorney of Louis C. Dessaint at that time?

Ans. 10th. He did not.

Int. 11th. Did he at any time prior to the sale?

750 Ans. 11th. He did not.

Int. 12th. Did he act, or profess to act, in behalf of Mr. Dessaint in respect to the purchase prior to the sale?

Ans. 12th. The only thing which can apply to that question is this fact, that he said that he would see the money paid in case Mr. Dessaint bid off the property, or words to that effect.

Int. 13th. Was there anything said at any of those conversations between you and Mr. Cook, before referred to by you, relative to the amount which should be bid for the property, or in reference to the amount of your claim upon the property being affected by any such bid? If so, state what.

Ans. 13th. Mr. Cook told me it was unnecessary for us to bid against Mr. Dessaint or himself, for if the property was struck off to either of them, he would see our claim paid in full.

Int. 14th. When was this conversation?

Ans. 14th. I am unable to specify the date; it was a few days prior to the sale, & partially, perhaps, on the morning of the sale; there was conversation took place almost every day.

Int. 15th. In any of those conversations before referred to, was the amount of the bid to be made specified, or in any manner alluded to, except as before stated?

751 Ans. 15th. Not according to my present recollection.

Int. 16th. Do you know, from any conversation with John P. Cook, the terms or conditions of the contract between Antoine Le Claire & James May, which you have before referred to, as the said John P. Cook being desirous to prevent the consumation? If so, state them.

Ans. 16th. I know what John P. Cook told me were the terms of the contract; John P. Cook told me, substantially, what was the tenor of a contract which he said existed between Le Claire & May, which, in substance, was that, in consideration of a settlement of all outstanding accounts between May & Le Claire, and a conveyance by May & Le Claire, to be made of the Rose Bank farm free and clear from all incumbrance, Le Claire was to transfer to May notes of A. H. Davenport, secured by mortgage on property in Le Claire, on which was due say ($37,000) thirty-seven thousand dollars, more or less, which notes and mortgages were at that time in the hands of Cook & Sargent, bankers, of this city, as an escrow to be delivered to Mr. May on his completion of his part of the contract.

Int. 17th. Did you understand this contract existed from the conversations of John P. Cook prior to the sale?

Ans. 17th. I did.

Int. 18th. Did you, on the day of the sale, & prior to its taking place, have any conversation with Louis C. Dessaint or John P. Cook in regard to the same, & particularly in reference to Louis C. Dessaint becoming the purchaser of the property? If so, state particularly what the same was.

752 Ans. 18th. I had no conversation whatever with Louis C. Dessaint or with John P. Cook; I had conversation in no way different that would in any way modify what I have before stated.

Int. 19th. Was there anything said by him in the last-mentioned conversation as to who would be bidders at the sale? If so, state what.

Ans. 19th. I think not; I think nothing was particularly said.

Int. 20th. Did you understand, by conversations with John P. Cook, prior to the sale, that Louis C. Dessaint would be one of the bidders at the same?

Ans. 20th. I certainly understood, from conversation with John P. Cook, that Louis C. Dessaint was desirous to purchase the property, & would be a bidder for it.

Int. 21st. On what day of the month & year, and what time of day, did the sale take place at public auction?

Ans. 21st. The sale took place on the 20th day of July, A. D. 1859, between the hours of two and three o'clock in the afternoon.

Int. 22d. Who was present at the sale?

Ans. 22d. Louis C. Dessaint, Joseph Le Claire, John P. Cook, & others whose names I do not now recollect; it is my impression that G. C. R. Mitchell was there, but I can't say, & some three or four others; and I may be mistaken about Joseph Le Claire being there.

753 Int. 23d. What were the terms of the sale, as publicly announced, and by whom were they announced?

Ans. 23d. I announced the terms of the sale substantially as follows: 1st. That the property would be sold subject to the prior incumbrance

which I have mentioned, amounting to about $3,300 00, (thirty-three hundred dollars.)

2d. (a) That bidders would have the privilege of bidding upon any part or parts of the property.

3d. That if there were no bidders for parts, it would be sold in a body as a whole.

4th. The sale would be for cash to the highest bidder.

5th. Unless the cash was paid at my office, in Davenport, before five (5) o'clock of that same afternoon, I reserved to myself the right of considering the highest bid void, and of making the deed to the next highest bidder who should pay the cash, who I should consider the highest bona-fide bidder.

Int. 24th. How many bids were there, by whom were they made in person, and what the amount of each bid?

Ans. 24th. I am unable to answer; there were a number of bids, some made by John P. Cook, some by Louis C. Dessaint, and it is my impression one or two by G. C. R. Mitchell; by my recollection, the first bid was for ($4,000 00) four thousand dollars, and gradually going up to ($5,000 00) five thousand dollars, by Louis C. Dessaint; who made the first bid I can't say.

754 Int. 25th. To whom was the property struck off?

Ans. 25th. To Louis C. Dessaint.

Int. 26th. What was the amount of the bid; and who made it in person?

Ans. 26th. ($5,000 00) five thousand dollars was bid by Louis C. Dessaint in person.

Int. 27th. Who made the next highest bid?

Ans. 27th. John P. Cook, to the best of my recollection.

Int. 28th. What was the amount of that bid?

Ans. 28th. I am unable to say; slightly below it, say from $100 to $250 below it.

Int. 29th. Was there any other bids made than those you have before referred to, by any other persons?

Ans. 29th. Not to the best of my recollection.

Int. 30th. Did you understand, at the time you struck the property off at five thousand dollars, that that amount was to satisfy and extinguish the lien which you represented as trustee on said property, if said $5,000 was paid in accordance with the terms of sale?

Ans. 30th. I understood this, that the security was to be taken off our hands, according to the promise of John P. Cook, & the full amount paid up.

755 Int. 31st. Was it with that understanding that you struck the property off to Louis C. Dessaint, at the bid of five thousand dollars, ($5,000 00.)

Ans. 31st. I had no understanding with Louis C. Dessaint, but it was in accordance with the promise of John P. Cook to me that I did it, that I allowed it to be sold at that price.

Int. 32d. Was the money paid, or any part of it, on that day?

Ans. 32d. It was not, no money was paid that day.

Int. 33d. When and how did you understand that the entire am't of the liens you held against the property referred to should be paid to you?

Ans. 33d. At that time there was no special understanding as to the first lien, to wit, ($3,300 00,) as to how it was to be paid or when, except that there was a general understanding that it should be paid soon. As regards to the lien under which I sold it was to be paid in cash.

Int. 34th. When did you receive your pay on the lien under which you

sold? What amount did you receive? How was it paid, in currency or otherwise; and who paid it to you in person?

Ans. 34th. On the 21st day of July, A. D. 1859, I rec'd the amount of the lien under which I sold. I received ($7,440 00) seven thousand four hundred & forty dollars. It was paid as follows: A check on Tallman, Powers & McLean of ($1,500) fifteen hundred dollars, currency; bank-notes ($2,000 00) two thousand dollars; a memorandum check of Cook & Sargent, on themselves, for three thousand nine hundred & forty dollars, ($3,940 00;) making seven thousand four hundred & forty
756 dollars. John P. Cook paid it to me in person at my office.

Int. 35th. Was this amount, in the manner specified, paid at the same time; and at what time of day?

Ans. 35th. It was paid at the same time, and, I think, at the middle of the day, the same time the deed was delivered.

Int. 36th. Was Louis C. Dessaint present at the time?

Ans. 36th. He was not.

Int. 37th. Did you, on the day the money was paid & the deed delivered, previous thereto, have any conversation with Louis C. Dessaint in regard to this sale, & the closing up of the matter in pursuance thereof? If so, state fully all that was said and done.

Ans. 37th. On the morning after the day of the sale I called on Louis C. Dessaint, & asked him if any arrangement could be made with him by which he would release his bid on the property & give up any rights he might have obtained by the bid. I told him I was very desirous that some arrangement might be made by which Capt. May might retain the property, & that it might be done if he would release his bid, and he was entitled to a deed and expected it, and would hold me for the property; told me he had bought the property and was going to hold it; that he did not buy it for any child's play; but that he wanted the property. I urged the matter upon him to allow me to make some arrangment, or he make some compromise with me, by which Capt. May
757 could retain the property. I was anxious that he should do so, but he declined. This was the only conversation I ever had with him on the subject. This was about 9 o'clock in the morning.

758 Int. 38th. Where was it that this conversation took place?

Ans. 38th. It was in the back-room of the branch of the State Bank.

Int. 39th. Who else was present; & was this all the conversation that took place?

Ans. 39th. No person else was present that I recollect. This is in substance all the conversation that passed.

Int. 40th. Was this all the conversation that took place between you and Louis C. Dessaint from the time of the sale on the 20th until the money was paid and the deed delivered on the 21st.

Ans. 40th. This is all I recollect. I had no conversation with him on the day of the sale.

Int. 41st. At the time of the conversation alluded to, was there anything said as to the manner in which the payment was to be made, or the amount thereof?

Ans. 41st. Nothing definite. It was understood that Mr. Cook would settle everything.

Int. 42d. Did you so understand the matter from your conversation with Louis C. Dessaint?

Ans. 42d. I so understood it.

759 Int. 43d. Did Mr. Dessaint designate Mr. Cook as his agent or attorney?

Ans. 43d. Not in so many words. I so understood it that he was the attorney of Mr. Dessaint for this special matter, so far as relates to the execution and delivery of the deed, and its sufficiency. The deed was submitted to Mr. Cook before execution, and the report of the trustee of the sale was drawn in Mr. Cook's office.

Int. 44th. Do you mean in your answer to confine your understanding with Mr. Dessaint to the simple execution and delivery of the deed and sufficiency of the same, without any reference to the consideration thereof or payment of the same?

Ans. 44th. As far as the making of the payment was concerned, I understood Mr. Cook to act as the attorney of Mr. Dessaint. As regards the amount, I had no conversation with Mr. Dessaint. I understood from Mr. Cook that he was paying it with Mr. Dessaint's money.

Int. 45th. State what, if any, conversation you had with Mr. John P. Cook, on the day of the delivery of the deed and prior thereto, with reference to the closing up of the sale.

Ans. 45th. There was nothing said that I now recollect, except in regard to the form of the deed & of the trustee's certificate, and of the transfers of papers generally from me to him, either for himself or some one else, I can't say, and in regard to the effect of the transfers which were made there, and also in regard to the memorandum check of which I have spoken, and in regard to the prior incumbrance.

760 Int. 46th. Have you a copy of that check?

Ans. 46th. I have not. It was in the usual form of Cook & Sargent' checks.

Int. 47th. Was the check made payable to the order of L. C. Dessaint, or was his endorsement on the same?

Int. Ans. 48th. Neither.

Int. 48th. Was there anything said, in the conversation last refered to with John P. Cook, in regard to your indemnifying Cook & Sargent as the agents of Antoine Le Claire against any incumbrance on the property before referred to in consequence of the sale by you as trustee the day previous? If so, state fully.

Ans. 48th. Never a word was said in regard to indemnifying them, Antoine Le Claire, or any one else, against anything, either at that time or prior.

Int. 49th. What was said or done on that day in regard to the ($3,300 00) thirty three hundred dollar mortgage, or in regard to the note secured by the same?

Ans. 49th. I am not positive that anything was said or done that day, but it is my impression that I asked him how he proposed paying that, or what he wished me to do with it. No arrangement in regard to it was made at that time.

Int. 50. In pursuance with your understanding with Mr. John P. Cook in regard to the mortgage, did he at any time afterwards, prior to the 1st of December, A. D. 1859, propose to arrange the matter; if so, how?

761 Ans. 50th. Either on the day the deed from me to Dessaint was delivered, or within a day or two after, Mr. Cook proposed to me to take up the prior mortgage by a note, at three months, with interest in at ten per cent., made by Cook & Sargent, endorsed by Antoine Le Claire, Louis C. Dessaint, & G. C. R. Mitchell, & George L. Davenport, or rather, I should say, he asked me if such a note would be satisfactory. I told him it would. That note was never given. He made afterwards another proposition which was carried into effect, which was to give his note, endorsed by Ebenezer Cook & Antoine Le Claire, for the amount

of the mortgage lien. That note was executed and delivered, and I procured for him an assignment of the mortgage to him.

Int. 51st. When was this consumated?

Ans. 51st. The date of the note, according to my present recollection, was July 28th, A. D. 1859. It was not delivered until on or about the 16th day of August, A. D. 1859. The cause of which delay was that I was obliged to procure from the original mortgage a regularly acknowledged assignment of the mortgage.

Int. 52d. State specifically what John P Cook said in the negotiations between you & him, prior to the time of sale in regard to the contract between Antoine Le Claire & James May, which he desired to prevent the consumation of.

Ans. 52d. The question is so extremely general that I cannot answer it specifically; much was said in regard to the contract, & to the manner in which it was brought about, made, or obtained.

Int. 53d. Do you remember anything that he said in those conversations in regard to the manner in which the contract was obtained, or what course he intended to pursue in regard to the same?

762 Ans. 53d. I remember that a good deal was said, the exact language I can't state, in regard to the manner as to which the contract was obtained; Mr. Cook gave me his version of the negotiations between Mr. May & Mr. Le Claire, which resulted in the agreement. He, Mr. Cook, said in substance that the negotiations had been progressing for some considerable time; that Mr. Le Claire, he (Cook) was satisfied, owed May nothing; that Mr. May had pestered Mr. Le Claire incessantly; had written to him many letters, the last of them containing threats of appealing to the church authorities, & bringing the matter before them for their action, until Mr. Le Claire, for the sake of peace and quiet, consented to the agreement, which, in the opinion of Mr. Le Claire's friends, was a gross outrage and wrong upon Mr. Le Claire; & that he, as well as others of Mr. Le Claire's friends, & as his attorney, considered it his & thier duty to protect Mr. Le Claire, as far as possible, against so great an imposition. I knew of no other reason for his desire for the property to go out of Mr. May's hands, and he, Mr. Cook, stated no other reason. He said nothing in regard to what course he would pursue, except as I have answered before, but said that he should protect Mr. Le Claire against the agreement in every legitimate way that he could.

Int. 54th. Did he say to you, or did you understand from his conversation, that that was his object in him or his friends becoming the purchasers of the property above referred to, known as the Rose Bank farm?

Ans. 54th. From what he said, I understood that the only reason that he interested himself in the sale was to protect Mr. Le Claire.

763 Int. 55th. To protect him in what manner?

Ans. 55th. By making the consumation of the contract between Capt. May and Antoine Le Claire impossible.

The taking of this deposition is adjourned until January 21st, A. D. 1859, at 9 o'clock a. m.

(Signed) WM. HALL, *Com'r.*

Resumed 9 o'clock a. m., Jan'y 21st, 1859.

Int. 56. Previous to your going to New York, did you have any conversation with John P. Cook in regard to these incumbrances? If so, state what.

Ans. 56th. I think the matter was mentioned, but without any special conversation on the subject.

Int. 57th. What time in the month & year did you go to New York?

Ans. 57. I left here about the 20th of June; between the 20th & 25th of June, A. D. 1859.

Int 58th. During your abscence did you have any correspondence with John P. Cook in regard to said incumbrances?

Ans. 58th. I did not.

764 Int. 59th. Do you remember when this trustee's sale was first advertised? If so, state.

Ans. 59th. The advertisement was put in the paper during my abscence, and I do not know the day it was first advertised.

Int. 60th. Was there any correspondence passed between you & John P. Cook, in regard to this sale, subsequent to your leaving for New York, and prior to the time when the property was struck off on the 20th day of July?

Ans. 60th. There was no correspondence between us, but on the day of sale I recieved a note on the subject from John P. Cook.

Int. 61st. Have you that note in your possession?

Ans. 61st. I considered the note of no consequence, and let it go as waste paper; I suppose it to be destroyed.

Int. 62d. Do you remember the contents of that note? If so, state fully, according to the best of your recollection.

Ans. 62d. The substance of the note was that I should not suffer myself to be persuaded to take doubtful drafts in payment of the claim against Capt. May.

Int. 63d. How long was it previous to the sale that you recieved that note, was it written with ink, and have you made any search for it?

Ans. 63d. The note was recieved after two o'clock of the day of the sale; I think it was written in pencil; I have not searched specially for it, but in looking for other matters where it was likely to be, I have had it in my mind, and did not see it; it is my impression I destroyed it the same day.

765 Int. 64th. Was there anything said in that note in regard to the sale, according to the best of your recollection, further than above stated?

Ans. 64th. I am not sure; I think not.

Int. 65th. Did you send any reply to the note?

Ans. 65th. I did not.

Int. 66th. When, and how long afterwards, did you next see John P. Cook on that day?

Ans. 66th. I saw him within ten minutes at his office; I called there to ride up to the court-house, and did ride up with him.

Int. 67th. Did you understand, from the conversation, or otherwise, what drafts Mr. Cook referred to in that note? If so, state the same fully.

Ans. 67th. I infered what drafts he [drafts he] referred to, but do not now recollect that he mentioned any in particular; I understood from Capt. May that a gentleman from Pittsburgh, who then was here, had drafts for a certain amount which he had brought for the purpose of effecting with them an arrangement for the adjustment of our demands, for the purpose of preventing a sale; I inferred that Mr. Cook referred to these drafts; I never saw the drafts.

Int. 68th. Was there negotiations pending between you and Capt. May & the gentleman from Pittsburgh you referred, at or about the time

you recieved this note from John P. Cook, with referrence to a
766 settlement of your demands? If so, state where and in whose presence.

Ans. 68th. Capt. May and the gentleman from Pittsburgh were in my office at the time the note was recieved; I was endeavouring to effect an adjustment with them; I am not sure that any else except us three were present; John T. King had been in a few moments before; he may have been there then, but I am not sure; I think he went out.

Int. 69th. Do you know, from conversations with John P. Cook, whether or not he understood the nature of the negotiations which were then pending between you and Capt. May & the gentleman from Pittsburgh?

Ans. 69th. John P. Cook evidently was aware that the gentleman from Pittsburgh was here and the purpose for which he came.

Int. 70th. How do you know that he was evidently aware?

Ans. 70th. From conversations with him.

Int. 71st. What kind of drafts, upon whom drawn, and by whom; & what amount did you understand, from the conversations with Capt. May & the gentleman from Pittsburgh, they had with which to effect the arrangement?

Ans. 71st. I understood he had currency drafts on Saint Louis for the amount of nine thousand ($9,000 00) dollars; by whom drawn, & whom drawn on, I do not recollect, if I heard; I understood them to be bankers' drafts.

Int. 72d. Do you know the amount of money recieved by Capt. May for which his note secured by the deed of trust, under which the sale above referred to was made, was given?

767 Ans. 72d. I decline to answer the above question.

Int. 73d. What was done with the note of James May, secured by the deed of trust, under which said sale took place?

Ans. 73d. I gave both the note and deed of trust to John P. Cook.

Int. 74th. Was there any assignment of the note made by you?

Ans. 74th. There was not; the note was endorsed in blank by the payee at the time it was delivered.

Int. 75th. Did you make any endorsement upon the note secured by the deed of trust after the sale and before its delivery to John P. Cook?

Ans. 75th. I endorsed on the note the amount of Mr. Dessaint's bid at the sale, less the expenses of the sale and trustee's fees, amounting to about eighty-nine dollars, ($89 00.)

Int. 76th. After the sale had taken place, and before the delivery of the notes secured by the said deed of trust & said mortgage, and after the amount was paid to you by John P. Cook as before referred to, did you consider you had any personal claim against James May for the deficiency?

Ans. 76th. I considered, after the payment of the purchase-money under the sale, that the deed of trust was paid in full, and so told John P. Cook when I delivered the papers to him, and before that; in regard to the other note, I procured the assignment so that, if the owner of the land required, his title might be fortified by a foreclosure of the
768 mortgage; I told Mr. Cook at the time that, in my opinion, no claims could be sustained against Capt. May on the note without first exausting the property covered by the mortgage; that I considered that the purchaser under the trust-deed sale had assumed the payment of the mortgage.

(Signed) CHAS. POWERS.

STATE OF IOWA, *Scott County, ss:*

I, William Hall, a notary public in and for Scott County and State of Iowa, do hereby certify that the foregoing deposition of Charles Powers was taken before me, and was by me, in his presence and in the presence of the att'ys for the said plaintiff & defendant, reduced to writing, and was by me carefully read over, in the presence of said parties, to said Charles Powers, and that the same was by him, on the 21st day of January, A. D. 1860, subscribed & sworn to before me, and that I am in no manner interested in the result of said suit.

Witness my hand and seal notarial this 21st day of January, A. D. 1860.

[SEAL.] (Signed) WM. HALL,
Notary Public, Scott Co., Iowa.

Com's fees, p'd by def't, $10 00.

It is hereby agreed that the sealing and delivery of the foregoing deposition to the clerk of said district court to be by him opened, is waived.

January 21st, A. D. 1860.

769 STATE OF IOWA, *Scott County, ss:*

I, Ira M. Gifford, clerk of the district court of Scott County, Iowa, do hereby certify that the foregoing is a full, true, & correct copy of the original deposition in the above-entitled cause, wherein George L. Davenport is plantiff and James May is defendant, as appears on file in my office.

Witness my hand and the seal of said court, affixed at office in the city of Davenport, this 27th day of May, A. D. 1862.

{SEAL OF THE DISTRICT C'TY SCOTT C'TY, IOWA.} IRA M. GIFFORD, *Clerk*,
Per HENRY JANSEN, *Deputy.*

(Indorsed:) In Scott district court. George L. Davenport vs. James May. Deposition of Charles Powers on behalf of defendant.

Delivered to me by commissioner, sealed & opened by me, and filed Feb. 3d, 1860.

(Signed) IRA M. GIFFORD, *Clerk.*

Com'r fees, p'd by def't, $10 00.

(Signed) WM. HALLL, *N. P.*

770 Circuit court of the United States in and for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EXECUTOR, AND MARguerite Le Claire, executrix, of the estate of Antoine Le Claire, dec'd, et al.

The depositions of Joseph A. Le Claire, Harvey Leonard, James Lindsey, and Marguerite Le Claire, witnesses in the above-entitled cause, on behalf of the plaintiff, taken before me, R. D. Congdon, a notary public in and for said county, at my office in the city of Davenport, county of Scott, and State of Iowa, excepting that of Marguerite Le Claire, which was taken at her residence in said city of Davenport, this 1st day

of May, A. D. 1863, in pursuance of a commission to issued by said court.

(Signed) R. D. CONGDON, *Notary Public.*

Notary's fees, $8 00, paid by plaintiff.

(Signed) R. D. CONGDON, *N. P.*

771 No. 3.—*1st Deposition of Joseph A. LeClaire—direct int. No.* 1 *to No.* 7.

Joseph A. Le Claire, witness as above, of lawful age, being first duly sworn and examined, maketh answer to the several interrogatories propounded to him, as follows:

1. State, if you know, when James May left Rose Bank farm; and did you or did you not go on the farm and have charge of it when May left it?

Ans. 1. I do not know when he left it. I did not go on the farm when he left it, but I had charge of it.

2. At or about the time when May moved off Rose Bank farm, did or did you not buy of him one or more horses and sundry articles, and give a note for the same to said May?

Ans. 2. I did.

3. When May left said farm, did or did not you take charge of said farm and control it, and were not said horses, &c., on the farm when you bought them?

Ans. 3. I did take charge of said farm and control it when May left it; said horses, &c., were on the farm when I bought them.

4. Did or did you not take charge and possession of said farm after May left it, and under direction of Antoine Le Claire, deceased; and, if you did, say what said Antoine Le Claire told you and directed you to do in reference to said farm after May left it?

772 Ans. 4. I did not take charge or possession of said farm after May left it, under direction of Antoine Le Claire, deceased. Said Antoine Le Claire told me nothing in relation to the matter.

5. If you took charge of said farm after May left it, did you get any rent from it; and, if you did, what did you do with the rents?

Ans. 5. I got no rent from it; I worked it myself.

6. Was it or was it not in the spring of 1859, when you took charge of said land?

Ans. 6. It was about that time.

7. Do you know or can you set forth any other matter or thing which may be a benifit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set them forth fully and at large in your answer.

Ans. 7. I do not know that I do or can.

Cross-examination on the part of the defendants.

Int. 1. If you say you took charge of said farm when said May left it, please state how long you continued in charge of it, and when you ceased to have charge of it, and who afterwards took and had charge of the same.

773 Ans. 1. I had charge of it for one season; after one crop had been taken off from the farm, L. C. Dessaint took and had charge of the same.

(Signed) J. A. LE CLAIRE.

The further taking of these depositions is adjourned until the 2d day of May, A. D. 1863, at 10 o'clock a. m.

R. D. CONGDON, *Notary Public.*

Resumed May 2d, 1863.

R. D. CONGDON, *Notary Public.*

774 No. 4.—*Deposition of Harvey Leonard.*

Harvey Leonard, witness as above, of lawful age, being first duly sworn & examined, maketh answer to the several interrogatories propounded to him, as follows:

1. Did or did you not, at any time, rent a farm near Davenport, Iowa, called "Rose Bank;" and, if yea, from whom did you rent it?

Ans. 1. I did; about May 1st, 1862; I first talked with Joseph A. Le Claire about renting it; the contract was made with Louis C. Dessaint.

2. Did or did not Joseph A. Le Claire & L. C. Dessaint have something to do with the renting or collecting of rent of said farm?

Ans. 2. They both interested themselves in renting it; while J. A. Le Claire was in Davenport and before he left the State of Iowa, I bargained with him for the farm, and when he left he told me I must see L. C. Dessaint, as he had left the renting of the farm with him; I finally rented the farm of L. C. Dessaint; the rents were collected by Joseph A. Le Claire after his return.

3. Do you know when James May left said farm? If yea, say when it was.

Ans. 3. I can't recollect the year.

4. Did or did not James May formerly reside on said farm? And, if he has left it, state who took possession after he left it, or had charge of it.

Ans. 4. He did reside on said farm; who took possession or had charge of it after he left, I do not know; I mean immediately after.

775 5. Do you know or can you set forth any other matter or thing which may be a benifit or advantage to the parties at issue in this case, or either of them, or may be material to the subject of this your examination in the matter in question in this case? If yea, set them forth fully and at large in your answer.

Ans. 5. I don't think that I do or can.

Cross-examination on the part of the defendants.

Int. 1. If you say you rented said farm, when did you rent it? State particularly.

Ans. 1. I rented it about the first of May, 1863.

Int. 2. If you say that any one took possession of said farm when May left it, state how you know the same, whether from personal knowledge or otherwise.

Ans. 2. I have not said that any one took possession of it.

Int. 3. What conversation, if any, and how often, has James May had with you about this suit or your testimony herein.

Ans. 3. He has spoken to me frequently about this suit; I do not recollect how often; I do not recollect the particular times; the conversations were in relation to what new testimony he had discovered. He never said anything in relation to taking my deposition in the case but once, which was some three weeks ago; he did not enquire what my testimony would be, but merely said that he intended taking my deposition, or words to that effect.

(Signed) H. LEONARD.

776 No. 5.—*Deposition of James Lindsey.*

James Lindsey, witness as above, of lawful age, being first duly sworn and examined, maketh answer to the several interrogatories propounded to him as follows:

1. How old are you, and where do you reside?

Ans 1. Forty-five years; in Scott County, State of Iowa.

2. Are you or are you not acquainted with a farm near Davenport, Iowa, called Rose Bank? and, if yea, describe its location as near as you can.

Ans. 2. I am acquainted with said farm. It is located about one-half mile north of the city of Davenport. Duck Creek runs through said farm. I cannot give the number of the section. I think it is in township seventy, (78,) range three (3) east.

3. Did or did not James May reside on said farm formerly? If yea, state when he left it, and who took charge of it immediately on his leaving it.

Ans. 3. James May did reside on said farm formerly. I can't state when he left it, neither do I know who took charge of it immediately on his leaving it.

4. Do you know or can you set forth any other matter or thing which may be a benifit or advantage to the parties at issue in this case, or either of them, or may be material to the subject of this your examination on the matter in question in this case? If yea, set them forth fully and at large in your answer.

Ans. 4. I can't say that I do.

777 *Cross-examination on the part of the defendants.*

Int. 1. If you state anything about any person taking charge of said farm, state how you know the same, whether from personal knowledge, hearsay, or otherwise.

Ans. 1. I have not so stated.

Int. 2. What conversation has the plaintiff, James May, had with you in reference to this suit, or your testimony therein, and when and how often?

Ans. 2. James May has frequently conversed with me in relation to this suit within the last year. I do not recollect the date of any of our conversations. Our conversation was in relation to the evidence he had obtained, and which he expected to obtain. He never told me that he expected to take my deposition in the case, or asked what my testimony would be, and I never knew that my testimony would be taken in the case until I was informed of it this day.

(S'g'd) JAMES LINDSEY.

The further taking of these depositions is adjourned until the 6th day of May, A D. 1863, at 2 o'clock p. m., at the house of Marguerite Le Claire.

(S'g'd) R. D. CONGDON, *N. P.*

778 Resumed May 6, 1863, at the house of Marguerite Le Claire.

(S'g'd) R. D. CONGDON, *N. P.*

No. 6.—*First deposition of Marguerite Le Claire.*

Marguerite Le Claire, witness as above, of lawful age, being first duly

sworn and examined, maketh answer to the several interrogatories propounded to her as follows:

Int. 1. Do you or do you not know a farm of land where James May formerly lived, on Duck Creek? and, if yea, state who now lives on that farm.

Ans. 1. I do know said farm. Joseph A. Le Claire now lives on the farm.

2. Has said May left that farm? and, if yea, state when he moved from it, and who had charge or control of said farm after May left it.

Ans. 2. I don't know whether said May has left said farm or not; don't know that he ever moved from it; don't know that any one has ever had charge or control of it, excepting James May.

3. Did or did not your husband, Antoine Le Claire, have charge of said farm, and call it and treat it as his own after May left it?

Ans. 3. He never did, to my knowledge.

4. Who was the owner of said farm, as you understood, after May left it, and who went on to it after May left it, and worked it, or had it worked?

Ans. 4. I do not know.

779 5. Was you, either in your deceased husband's lifetime or since his death, requested by any one to execute or sign a deed conveying said land on Duck Creek to any one? and, if yea, say what you did or refused to do in the matter.

Ans. 5. I was requested in my husband's lifetime to sign or execute a deed conveying said land to a son of Joseph A. Le Claire. I have stated what I did, and what I refused to do, in the matter in my former deposition in this case, and do not wish to repeat it. I have nothing further to say about it.

6. Did or did not George L. Davenport, since your husband's death, come to you with a deed, or request you to sign a deed, conveying said land to Joseph A. Le Claire, or a child or children of his?

Ans. 6. He asked me if I was willing to sign a deed of said land, but he did not come to me with a deed. He asked me if I was willing that the land should be conveyed to Joseph A. Le Claire's son. He said he could make the deed himself.

7. Did or did not said Davenport show you a deed for said land, with your husband's name signed thereto, conveying said land to some one or more of the children of Joseph A. Le Claire, and request you to sign it? If so, state where that deed is now.

Ans. 7. Mr. Davenport did not show me said deed, I think. I think a deed for said land, conveying the same to one of the children of Joseph A. Le Claire, and signed by my husband, was shown me by Charles E. Putnam. He told me it was signed by my husband. I do not

780 read writing, and cannot say it was signed by him, of my own knowledge. I do not know where that deed now is.

8. Do you know or can you set forth any other matter or thing which may be a benifit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the [the] matters in question in this cause? If yea, set forth same fully and at large in your answer.

Ans. 8. I don't know anything farther.

Cross-examination on the part of defendants.

Int. 1. Are you or are you not acquainted with business transactions, and familiar with deeds and other written papers relative to business?

State fully what acquaintance and familiarity with such matters you possess.

Ans. 1. I am [am] not acquainted business transactions. I can neither read or write in the English language.

Int. 2. Are you in the habit of reading deeds or other written instruments for yourself or not?

Ans. 2. I am not.

Int. 3. If you say, in answer to any of the plaintiff's questions, that George L. Davenport, since your husband's death, brought or showed you any deed relating to said farm, or requested you to sign any
781 such deed, state whether you are sure that you correctly understood said deed, or what property it referred to?

Ans. 3. George L. Davenport neither brought or showed me any such deed.

Int. 4. If, when you were before examined in this case, you stated that George L. Davenport brought you any such deed, or asked you to sign it, please state whether you may not have been mistaken, or whether the deed may not have related to some other property than the said farm?

Ans. 4. If I so stated when I was examined before in this case, I must have been mistaken, for I am sure that Mr. Davenport never brought me such deed.

Int. 5. State whether James May has ever, since your husband's death, intruded himself upo you, and questioned you on the subject of this suit, or the matters involved therein, in the absence of your friends or counsel; and, if so, how often?

Ans. He came to my house, and enquired the names of my husband's heirs. I do not think he spoke to me on any other subject. I believe I was alone at the time. I am not sure that he was at my house more than once, since my husband's death, to see me.

I wish to amend my answer to the 6th direct interrogatory by saying that he asked me if I was willing "to have a deed signed," instead of "to sign a deed."

(Signed) MARGUERITE her + mark LE CLAIRE.

Witness:
(S'g'd) LOUIS A. LE CLAIRE.

782 STATE OF IOWA, *Scott County:*

I, R. D. Congdon, a notary public in and for said county, do hereby certify that Joseph A. Le Claire, Harvey Leonard, James Lindsey, and Marguerite Le Claire were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and that the foregoing depositions, by them respectively subscribed, were reduced to writing by me in their presence respectively, and were respectively carefully read over to them by me before they were signed, and that they were taken at the times and places specified.

In testimony whereof I have hereunto set my hand and notarial seal this 6th day of May, A. D. 1863.

[NOTARIAL SEAL.] (Signed) R. D. CONGDON,
Notary Public, Scott County, Iowa.

[5-ct. rev. stamp cancelled.]

783 (Indorsed:) Circuit court of United States, district of Iowa. No. 25, eq. James May vs. George L. Davenport, executor, & Mar-

gnerite Le Claire, ex'r'x of Antoine, dec'd, et al. Depositions on the part of plaint'ff.

Filed May 8, '63. Opened in court.
(S'g'd) WOODWARD, *Clerk C. C.*

Depositions of J. A. Le Claire, H. Leonard, J. Lindsey, Marguerite Le Claire.
Notary's fees, $8 00, p'd by plaintiff.
(S'g'd) R. D. CONGDON, *N. P.*

784 Circuit court of the United States, district of Iowa.

JAMES MAY
vs.
MARGUERITE LA CLAIRE AND GEORGE L. Davenport, executors of the last will of Antoine Le Claire, deceased, and others. } Equity.

The depositions of Margurite Le Claire, Adrian H. Davenport, Joseph Le Claire, and George Wilson, witness in the above-entitled cause, taken before me, R. D. Congdon, a notary public in and for said county, at my office in the city of Davenport, county of Scott, and State of Iowa, commencing on the 24th day of March, A. D. 1863, in pursuance of a commission to me directed by the clerk of the circuit court of the United States in and for the district of Iowa.

R. D. CONGDON,
Notary Public, Scott County, Iowa.

785 *Second deposition of Marguerite Le Claire.*

Marguerite Le Claire, witness as above, of lawful age, being duly sworn and examined, maketh answer to the several interogations propounded to her, as follows:

Quest. 1. What is your age, place of residence; and are you not the widow of Antoine Le Claire, late of Davenport, Iowa, deceased?

Ans. 1. My age is sixty-two years; my residence is in Davenport, county of Scott, and State of Iowa; I am the widow of Antoine Le Claire, late of Davenport, Iowa, deceased.

Qust. 2. When did Antoine Le Claire die, and who are his executors?

Ans. 2. He died in Davenport, Iowa. George L. Davenport and myselfe are his executors.

Quest. 3. Are you unacquainted with the location of a farm called Rose Bank, near Davenport, Iowa? an, if you, state where it lies, and who formerly was the reputed owner of it.

Ans. 3. I am not acquainted with the location of any farm called Rose Bank. I have ne'r herd the name of any farm as the Rose Bank farm before. I may know it by some other name, but I do not know it by that. I do not know where

(R. D. CONGDON.)

786 any farm of that name lies, neither do I know who formerly was the reputed owner of any farm of that name.

Quest. 4. Be pleased to state whether said Antoine Le Claire, at any pe-

riod, was in the possession of said Rose Bank farm, as its owner; and, if you, state when he had such possession.

Ans. 4. I do not know that Antoine Le Claire was ever in the possession of any farm called the Rose Bank farm.

Quest. 5. Who was in possession of Rose Bank farm at the period of the death of said Antoine Le Claire; and who was the owner at that time?

Int. 5. I do not know. As I have before said, I know of no farm of that name.

Quest. 6. Was or was not said Antoine Le Claire the owner and possessor of Rose Bank at the time of his death, or if he had previously been the owner and possessor of Rose Bank, but before his death sold or agreed to sell and convey it to another person, or persons, state who where the person or persons to whom he had conveyed, or agreed to convey it.

787 Ans. 6. I do not know.

Quest. 7. Was not a deed executed by said Antoine Le Claire within one or two years before his death, conveying said Rose Bank farm to one Joseph A. Le Claire, or a child or children of the said Joseph A. Le Claire, (a nephew of your deceased husband;) were you not requested to execute the said deed as the wife of said Antoine Le Claire; and did you not refuse to execute the same; and, if you did refuse to sign said deed, why did you refuse?

Ans. 7. I do not know that my husband ever owned any farm of that name. There was a deed made of a farm to the children of Joseph A. Le Claire, but not of the name of Rose Bank. I was requested to sign the deed which he made, conveying a farm to the children of Joseph A. Le Claire, as the wife of Antoine Le Claire, and I refused to sign the said deed at that time; I refused to sigin the deed because I thought he was giving to much to one of his nephews, as he had so many others, and I thought this one was getting more than his share; but I do not know that the farm I have mentioned was called the Rose Bank farm.

Quest. 8. Did not George L. Davenport come to you with a deed since the death of your husband, and open the same before you, and show you your husband's name signed thereto; and, if yea, did not

(R. D. CONGDON, *N. P.*)

788 said Davenport tell you it was a deed from your husband conveying said Rose Bank farm to a child or children of said Joseph A. Le Claire? Also, did not said Davenport, at said interviewe, say to you that the Rose Bank farm belonged to your husband, and that he, Davenport, had only a small claim on it; and, if yea, did you or did you not then sign the deed; and, if you did not, why did you then refuse?

Ans. 8. George L. Davenport did come to me with a deed since the death of my husband and opened the same before me, and showed me my husband's name signed thereto; he did not tell me it was a deed from my husband conveying the Rose Bank farm to a child or children of Joseph A. Le Claire. Davenport did not, at said interview, say to me that the Rose Bank farm belonged to my husband, and he did not say that he had only a small claim on it, but he said the farm mentioned in the deed was his property, and he could convey it himselfe without my signature. I did not then sign the deed. I did not sign it for the reason that he did not tell me that it was necessary for me to [to] sign it. He only asked me if I would sign it; I told him that I would, but

789 did not do it.

Quest. 9. Did you or did you not at any time, before or since

the death of your said husband, sign a deed which had been executed by your husband, conveying said Rose Bank farm to a child or children of said Joseph A. Le Claire? and, if you did execute such a conveyance since the death of your said husband, state who advised you to execute the same. Also state who took charge of the deed after you signed it.

Ans. 9. I have not, since or before the death of my husband, signed any deed which had been executed by my husband, conveying Rose Bank farm, or any other farm, to a child or children of Joseph A. Le Claire.

Quest. 10. State what, if any consideration was paid by the child or children of said Joseph A. Le Claire for the conveyance to them of said Rose Bank farme.

Ans. 10. I know nothing about it.

Quest. 11. Do you or do you not know that said George L. Davenport had, before the death of your husband, executed a conveyance to your husband of the said farm called Rose Bank? and, if you know, state who took charge of, and who now

(R. G. CONGDON, *N. P.*)

790 holds said deed.

Ans. 11. I do not know anything about it.

Quest. 12. Do you or do you not know that since the death of your said husband said Davenport has executed a quitclaim deed for Rose Bank to a minor child of the said Joseph A. Le Claire? If yea, state what the said child paid for the said deed. Or if nothing was paid by said child, why was the said deed made? State also how old said child is.

Ans. 12. I know nothing about it.

Quest. 13. Are you or are you not acquainted with the names, ages, and residences of the relations of your deceased husband, and other persons, if there be any, interested as devisees under the will of your deceased husband? If yea, state the names, age, and place of residence of each.

Ans. 13. I know the names and residences of all the relatives of my deceased husband, but I do not know their ages; their are other devisees that I do not know; his relatives are a brother, Francis Le Claire, living at Portage, Des Sioux, State of Missourie; don't know
791 his age; another brother, David Le Claire, residence, Davenport, Iowa, do not know his age; his nephews, Francis Le Claire, residence, Portage, Des Sioux, Missouri; Henry Le Claire, Springfield, Illinois; Antonine Le Claire, Portage, Des Sioux, Missourie; Eulile Penier, St. Louis, Missouri; Joseph A. Le Claire, Antoine Le Claire, Francis Le Claire, Nepolean Le Claire, George Le Claire, Antonette Le Claire Mary Le Claire, Louis Le Claire, Joseph Le Claire, jr., Margaretti Le Claire, and Willim Le Claire, residence Davenport, Iowa; Stephen Bennvener, Adeline Hibbard, William Laucier, John Saucier, Stepen Saucier, Margaretta St. Cin, reside at Portage, Dex Sioux, Missouri; there are others whose names I have forgotten.

Qust. 14. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination on the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. 14. I know of nothing which I think would be of advan-

792 tage to the parties, or either of them, or that would be materieal to the subject of my examination or the matters in question in this cause.

her
MARGUERITE + LE CLAIRE.
mark.

Subscribed and sworn to before me by Marguerite Le Claire this 24th day of March, A. D. 1863.

R. D. CONGDON, *Notary Public.*
(R. D. CONGDON, *N. P.*)

793 *Second dep. of J. A. Le Claire—direct int. No. 1. to No. 26.*

Joseph A. Le Claire, of Davenport, Iowa, of lawful age, a witness in this cause, being first duly sworn and examined, maketh answer to the several interogations propounded to him as follows:

Quest. 1. What is your age, place of residence, and ocupation?

Ans. 1. I am twenty-nine years old; Davenport, Iowa; no business.

Quest. 2. What relationship, if any, do you bear to Antoine Le Claire, deceased, late of Davenport, Iowa?

Ans. 2. I am his nephew.

Quest. 3. Can you say if said Antoine Le Claire, at and for several years before his death, did or did not have some one to expend considerable time in his office with him also in keeping his books relative to his business and acting as a general agent in looking after and in management of his business? If yea, state who the said person or agent was or is.

794 Ans. 3. He did have such agent; I occupied the position myself.

Quest. 4. Are you acquainted with a parcel of land near Davenport, Iowa, called Rose Bank farm? If yea, state where it lies and give a discription of it by congressional survey, or otherwise, as you can.

Ans. 4. I am acquainted with said property; it lies on Duck Creek in Davenport Township, Scott County, Iowa; it is a part of the northeast quarter of section eleven in township seventy-eight, range then east; I cannot give an exact discription of it; there are one hundred and forty-four and a fraction of acres in said farm.

Quest. 5. Are you acquainted with lands partly on an island and partly on the Iowa side of the Mississippi River, about three miles below Le Claire, which said Antoin Le Claire had owned previcus to his death? If yea, give a discription of them by lines or surveys, as you best can.

Ans. 5. I know that Antoine Le Claire owned such lands previous to his death, but I cannot give a discription of them either by
795 lines or surveys.

Quest. 6. Did you or did you not have knowledge of a compromise and a written agreement entered into and signed by said Antonine Le Claire and by James May, in which reference is made to certain lands owned by said Le Claire? If yea, state which are the lands referred to in said writing.

(R. D. CONGDON, *N. P.*)

Ans. 6. I herd of an agreement that was entered into by said parties in relation to certain lands; I know nothing in relation to it, of my own knowledge; I do not know that said agreement was in writing or that it referred to any particular lands.

Quest 7. Do you know whether said Antoine Le Claire in his lifetime

had possession of said farm called Rose Bank? If yea, state when he got possession, and who gave him possession of the same.

Ans. 7. Antoine Le Claire never had possession of said farm during his lifetime.

Quest. 8. Are you acquainted with George L. Davenport? If yea, state whether he did or did not execute a deed or bond for a deed
796 for said Rose Bank farm to said A. Le Claire in his lifetime? If yea, why did he execute such deed or bond, and where now is the same bond or deed? State also when said bond and deed were executed.

Ans. 8. I am acquainted with George L. Davenport; he did not execute to A. Le Claire either a deed or a bond for a deed for Rose Bank farm during the lifetime of said A. Le Claire to my knowledge.

Quest. 9. If such bond or deed was executed, as refered to in last question, why was the same not recorded? What was the object of not recording it?

Ans. 9. No such bond or deed was ever executed to my knowledge.

Ques. 10. Did or did not said Antoin Le Claire before his death execute a deed conveying said Rose Bank farm to one or more of your children? I yea, state when that deed was made, and state why it was not recorded. State also who now has possession of said deed.

Ans. 10. He did not.

797 Quest. 11. Has or has not said George L. Davenport executed a deed conveying said Rose Bank farm to one or more of your children since the death of said Antoine Le Claire? And if he has executed such deed, state why he did execute the same; state particularly all the reasons, considerations, agreements, facts, and circumstances connected with the transaction which caused said deed to be executed.

Ans. 11. George L. Davenport has executed a deed to one of my children, of Rose Bank farm, since the death of Antoine Le Claire. At the time of the death of Antoine Le Claire he was indebted to me in the sum of fifteen thousand dollars for services, and some time before his death it was agreed by and between him and myselfe, that I should take said farm in part payment of his said indebtedness to me. After the death of Antoine Le Claire, I insisted that George L. Davenport should deed said property to me, according to agreement made between him and Antoine Le Claire. I do not know particularly what that agreement was, further than that there was an agreement between them, that Davenport should convey me the land; and Antoine Le Claire told me
798 that he had purchased it from Davenport, and he, Davenport, was to convey it to me. It was conveyed to my child at my request.

Quest. 12. If Rose Bank farm was conveyed to one or more children, as is inquired of in the last question, was or was it not in pursuance of an order of Antoine Le Claire made before his death?

Ans. 12. It was in pursuance of an agreement made by and between Antoine Le Claire, George L. Davenport, and myselfe, before the death of Antoine Le Claire.

Quest. 13. Are you acquainted with John P. Cook, attorney at law? If yea, state whether he was or was not, at or about the time said Antoine Le Claire got possession of said Rose Bank farm from said James May, his (Le Clair's) legal counsellor in most if not all his legal business at Davenport.

Ans. 13. I am acquainted with John P. Cook, attorney at law; he was one of Antoine Le Clair's legal counsellors for some six years previous to his death. As I have stated in a former answer, Antoine Le Claire never had possession of said farm, to my knowledge.

799 Quest. 14. Do you or do you not know of a sale, or pretend sale, of said Rose Bank farm by one Charles Powers, as trustee? If yea, state what conversation you heard take place between said Antoine Le Claire and said John P. Cook and Louis C. Dessaint relative to the purchase of said Rose Bank farm. Confine your answer to what took place at or before or about the time of said sale.

Ans. 14. I do know of a sale of said farm by one Charles Powers, trustee. I have no recollection of any conversation between said parties in relation to the purchase of said farm.

Quest. 15. State what said Antoine Le Claire may have said to you about the purchase of the said Rose Bank farme by Louis C. Dessant; state also if you know whether or not said Antoine Le Claire indorsed a note to pay or part pay said Powers for said Rose Bank farm.

Ans. 15. Antoine Le Claire never said anything to me on the subject that I now recollect. I do not know whether Antoine Le Claire indorsed a note in payment or part payment of said farm to Powers or not.

(R. D. CONGDON, *N. P.*)

800 Quest. 16. Who now has possession and is the owner of said Rose Bank farm? State, if you know, and state also the age of the owner, or reputed owner; state also if said owner paid any money or price for said Rose Bank farm; state all you know of the circumstances and manner in which the present owner of Rose Bank farm came to procure the title to the same.

Ans. 16. My son Joseph A. Le Claire, jr., is the owner of said farm. I am now in possession of it. He, my son, is six years old. He did not pay any money or price for said farm. He procured title to said farm through my request to George L. Davenport, to deed the same to him instead of me.

Quest. 17. Were you or were you not the actual purchaser in your own name of the Le Claire reserve, under the execution sale made under the decree of A. Le Claire vs. Adiran H. Davenport? If yea, who authorized the deed under said sale to be made to Antoine Le Claire? Also did you not, under said sale, take possession of said reserve, and put said Adrian H. Davenport in charge of it as your agent?

Ans. 17. I purchased said property as agent for Antoine Le
801 Claire. I purchased it in his name and directed the sheriff to make the deed to him. I took possession of said reserve under said sale, as agent for and in the name of Antoine Le Claire. I did not put Adrian H. Davenport in charge of said property as my agent.

Qst. 18. Did you know a banking-house or firm at Davenport, disignated Cook and Sargent? If yea, state if that firm did not fail in business; and if it did fail, when; also state who constituted the members of said firm.

Ans. 18. I did know such house or firm. It did fail in business in December, 1860. I think Ebenezer Cook, John P. Cook, George B. Sargen, and John C. Davie were the members of the said firm; if there were others I do not kno them.

Quest. 19. Do you or do you not know whether said Cook and Sargent, at the date of their failure, were indebted to said Antoine Le Claire? If yea, state the facts.

Ans. 19. Antoine Le Claire was endorser for said firm to a large amount; they were not directly indebted to him.

802 Quest. 20. Do you know whether said Louis Dessaint paid anything for his purchase of Rose Bank farm from said Charles Powers? If yea, state the facts.

Ans. 20. I do not know.

Quest. 21. Do you or do you not know whether said Antoine Le Claire had anything to do, by counsel or otherwise, in the conv'yance of Rose Bank farm from Ebenezar Cook to George L. Davenport?

Ans. 21. I do not.

Quest. 22. Did you or did you not have possession of said Rose Bank farm as agent for one or more of your children at and some time before the death of said Antoine Le Claire, under a deed executed by
803 said A. Le Claire? State what was the motive in or consideration which induced said A. Le Claire to give or convey said Rose Bank farm to your children, or some of them.

Ans. 22. I did not. Antoine Le Claire never conveyed said farm to one or more of my children.

Quest. 23. Do you know who advised the making of the deed by G. L. Davenport, and who advised the recording of same?

Ans. 23. I do not know.

Quest. 24. Had you or had you not some valuable papers belonging to the estate of said A. Le Claire, dec'd, which you retained in your possession until you procured a complete conveyance of said Rose Bank farm from the executors, in compliance with a stipulation made by A. Le Claire with you in his lifetime? If yea, state what kind of conveyance you procured, when and by whome executed, and all the facts within your knowledge regarding the same.

804 Ans. 24. I had in my possession papers belonging to the estate of Antoine Le Claire, and retained them untill I had a settlement with the executors. I had papers and possessions of lands after George L. Davenport had deeded the Rose Bank farm to my child. The conveyance of Rose Bank farm was made by George L. Davenport to my child as real owner of said land, and not as executor of the estate of Antoine Le Claire.

The farther taking of these depositions is adjourned until March 25th, 1863, at 8 a.m.

R. D. CONGDON,
Notary Public.

Resumed this 25th day of March, A. D. 1863.

R. D. CONGDON,
Notary Public.

Quest. 25. Was or was not Mrs. Margaurite Le Claire, before the death of A. Le Claire, requested to sign a deed to complete a conveyance of said Rose Bank farm from A. Le Claire and wife to two of your children? Did she not refuse to sign the same? If she did, what reason did she give for refusal to sign the same, &c?

Ans. 25. Mrs. Margurite Le Claire was not requested to sign said deed, to my knowledge.

805 Quest. 26. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. 26. I think that I have stated, in answer to the several interrogations propounded to me in this my examination, all that I know in relation to the matter in issue.

J. A. LE CLAIRE.

Subscribed & sworn to before me by Joseph A. Le Claire this 25th day of March, A. D. 1863.

R. D. CONGDON,
Notary Public.

(R. D. CONGDON, *N. P.*)

806 No. 7.—*Deposition of George Wilson.*

George Wilson, of Scott County, Iowa, of lawful age, a witness in this cause, being first duly sworn and examined, maketh answer to the several interrogations propounded to him as follows:

Quest. 1. State your age, place of residence, and your business.

Ans. 1. Sixty-nine years; Scott County, Iowa; farmer.

Quest. 2. Were you or were you not acquainted with Antoine Le Claire, late of Davenport, Iowa, deceased; and, if yea, when did he die?

Ans. 2. I was acquainted with him. I think he died about the 20th day of September, 1861.

Quest. 3. Are you acquainted with a farm called Rose Bank farm? and, if yea, state where it lies.

Ans. 3. I am very well acquainted with said farm. I once owned it. It lies two miles north of the city of Davenport, in Scott County, Iowa.

Quest. 4. Did you or did you not hear Antoine Le Claire say anything about Rose Bank farm shortly before his death? and, if yea, state what he said, and where and when he said it.

807 Ans. 4. I did. Some two or three days before he was taken ill I had a conversation with him in his office in Davenport, Iowa. He then and there told me that he had purchased Rose Bank farm of George L. Davenport, and that he intended giving it to Joseph A. Le Claire's children, and that he supposed that Joseph A. Le Claire would live there himselfe, and that I would have to leave the farm.

Quest. 5. State anything you may have herd said Antoine Le Claire say about having given said Rose Bank farm to his nephew, or to the children of his said nephew.

Ans. 5. I think he said he had given it to the children of his nephew Joseph A. Le Claire, but I am not positive whether he said he intended giving, or that he had given it to them.

Quest. 6. Are you acquainted with Louis C. Dessaint? If yea, did you ever see him at Rose Bank? If you did see him there, state whether or not he took any interest regarding the said farm, and how and when. What did he say or do in reference to same?

808 Ans. 6. I am somewhat acquainted with him. I have seen him at Rose Bank farm. Some time in the spring of the year 1862 Louis C. Dessaint came to the farm with Joseph A. Le Claire for the purpose of, and did assist him, Joseph A. Le Claire, in arrangeing in relation to the rent due from me to Joseph A. Le Claire. At another time he came to the farm and criticised my management of the farm; found fault with the manner in which I had stacked the hay, &c.

Quest. 7. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. 7. I don't know that I can. I will state, however, that I rented the Rose Bank farm from George L. Davenport in March, 1860, and

paid him three hundred and fifty dollars per year rent. Before the expiration of the year, I think in January, 1861, George La Davenport told me that he had sold said farm to Antoine Le Claire, and that
809 I would most likely have to leave the farm at the expiration of the year, as Joseph A. Le Claire would probably live theire himselfe; at least, any arrangements that I might wish to make in relation to said farm must be made with Le Claire in future. In the early part of March, 1861, I leased the farm for another year from Joseph A. Le Claire; I paid my rents to him, and occupied the farm under him until March, 1862. I have herd Joseph A. Le Claire say that the farm belonged to his child or children, and that he had the management of it as their agent. He said this to me while I occupied it as his tenant.

GEORGE WILSON.

Subscribed & sworn to before me by George Wilson this 25th day of March, A. D. 1863.

R. D. CONGDON,
Notary Public.

Witness fees, $1 70; paid by plaintiff.

The further taking of these depositions is adjourned until the 2nd day of April, 1863.

R. D. CONGDON,
Notary Public.

Resumed this 2nd day of April, 1863.

R. D. CONGDON,
Notary Public.

810 No. 8.—*Dep'f'n of A. H. Davenport—direct int. No.* 1 *to No.* 8.

Adrian H. Davenport, of Scott County, Iowa, of lawful age, a witness in this cause, being first duly sworn and examined, maketh answer to the several interogations propounded to him as follows:

Quest. 1. How old are you, and where is your residence?

Ans. 1. Fifty-one years; Le Claire, Scott County, Iowa.

Quest. 2. Are you or are you not acquainted with the plaintiff in this suit, and were you or were you not acquainted with Antoine Le Claire, late of Davenport, Iowa, deceased?

Ans. 2. I am acquainted with the plaintiff in this suit, and I was acquainted with Antoine Le Claire.

Quest. 3. Did you or did you not purchase certain real estate of said Antoine Le Claire situated within the so-called "Le Claire reserve," within the corporate limits of the city of Le Claire? If yea, state what year your purchase was made in, and state whether said Le Claire did or did not execute to you a deed therefor, and also state if the annexed "Exhibit A" is or is not a copy of the same, and did you or did
811 you not execute a mortgage to said Le Claire to secure the payment of the consideration money for the purchase of said land; and, if yea, state how much was agreed to be paid for said land; and if you executed a mortgage and notes to secure said consideration, state whether or not the copy hereto attached marked Exhibit B is a true copy of said notes and mortgage; also state whether said deed and mortgage were recorded.

Ans. 3. I did purchase certain real estate of said Antoine Le Claire, situated in what is called Le Claire's reserve, in the year 1857; said real

estate is situated within the corporate limits of the city of Le Claire; said Le Claire did execute to me a deed therefor. The annexed Exhibit "A" is a precise copy of the deed. I did execute to Le Claire a mortgage to secure the payment of the consideration money for the purchase of said land. I agreed to pay thirty-five thousand ($35,000) dollars for said land. The exhibit hereto attached marked Exhibit B is a true copy of the notes and mortgages which I executed to secure the consideration money for said purchase. Said deed and mortgage were recorded.

812 Quest. 4. State how much, if any, money you paid said Antoine Le Claire on account of said purchase, and how much, if any, in value or amount in other property or notes, or securities of any sort, you paid him or placed in his custody on account of said purchase. State whether or not you placed in the custody of said Le Claire all the notes set forth in Exhibit "D" as collateral that were to be collected by said Le Claire, and the proceeds of the same to be credited on account of the purchase and payment for said land.

Ans. 4. I paid him between three and four hundred dollars on account of said purchase in cash; the exact amount I do not recolect. I think the payment is indorsed on one of the notes which I executed to him for said property. I placed in his custody notes to the amount of somewhere about sixteen thousand dollars, ($16,000,) as collateral security for the payment of said purchase-money. I did place in the hands of Le Claire all the notes set forth in Exhibit D as collateral, and the same were to be collected by Le Claire, and the proceeds were to be credited on account of the purchase and payment for said land.

Quest. 5. Have you or have you not paid said Antoine Le Claire, or in some way or other settled with him for your purchase aforesaid?

813 and, I yea, state the terms on which [on which] you settled with or paid him.

Ans. 5. I have settled with Antoine Le Claire for my purchase aforesaid. I entered into a written agreement with him for the said settlement. A copy of said agreement I hereto attach and make a part of this my answer, and request the notary to make the same Exhibit "R." All the conditions of said contrac have been complied with, and a settlement has been made in accordance therewith, except the surrender of the notes, which the estate now have possession of, although I have paid or cancelled the same in the manner specified in said contract, and am entitled to the same. (Said copy is attached, and marked Exhibit R by me.)

(R. D. CONGDON,
Notary Public.)

Quest. 6. Did or did not said Antoine Le Claire commence suit against you for the foreclosure of said mortgage? and, if yea, state—1st. The court in which said suit was commenced. 2nd. Was said suit dis-

814 missed, or conducted to a judgement decree against you. 3rd. If their was a judgement and decree, was or was not an execution issued on the same, and the land described therein sold? 4th. And, if sold, who, if any one, took possession of the premesis, or claimed to be the owner of the same under such execution sale. 5th. If there was such suit, was or was it not conducted by an agreement betweene you and said Antoine Le Claire to that purport? That you should not make any defence to the suit, but you should let said Le Claire have judgement or decree, in consideration whereof said Antoine Le Claire agreed to look to said land exclusively for his pay or claim on you, and

release you from all liability outside of said land. If any such agreement was made, state if it were by paroll or in writing. Will you file the writing herewith as a part of your deposition; or, if you are not disposed to file the same, furnish a copy of the same with this your deposition?

Ans. 6. Antoine Le Claire did commence suit against me for the
815 foreclosure of said mortgage. It was commenced in the district court of Scott County, Iowa. Said suit was conducted to a judgement and decree against me. An execution was issued on said judgement and decree, and the land described therein was sold. Antoine Le Claire took possession of the premesis after the sale, and claimed to be the owner of the same under said execution sale. Said suit was conducted in accordance with an agreement between Antoine Le Claire and myselfe, a copy of which agreement is attached to this my deposition, marked Exhibit "R," and refered to in my answer to interrogatory No. 5. Said agreement was in writing. I prefer not filing the original agreement. Exhibit R, which was annexed to this my deposition, and made a part of my answer to the 5th interrogatory, is a full and true copy of the said agreement.

Quest. 7. Were you or were you not prepared to make payments prior to the commencement of said suit, say in 1859, and did you or did you not tender payment, and did not said Antoine Le Claire or his agent, J. P. Cook, refuse to receive the same? If yea, state the reason
816 given for such refusal, and state what was said and done in reference to tender and refusal to accept.

Ans. 7. I was not prepaired to make payment at any time prior to the commencement of said suit, but in the year 1859, I think it was, or prior to the expiration of the contract, or of the time mentioned in a certain contract betweene Antoine Le Claire and James May, I came down to Davenport and proposed the payment of some six hundred to eight hundred dollars—the exact amount I have forgotten—to be credited on some of the notes which Le Claire held from me as collaterals, when he, Le Claire, referred me to J. P. Cook, in whose hands the said notes were. I called on J. P. Cook in relation to making the payment, who told me that he would rather not receive the money, as there was a contract existing between Antoine Le Claire and James May, by the conditions of which said notes might become the property of said James May, in which case he would prefer that James May should receive the notes as per contract, and collect them for himselfe.

Quest. 8. Do you know or can you set forth any other matter
817 or thing which may be a benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. 8. I do not know anything further.

(R. D. CONGDON, *N. P.*)

818 *Cross-interrogatories No. 1 to No. 3.*

Cross-interrogations on the part of defendant:

Cross-int. 1. If in your direct examination you have stated any agreement between yourselfe and said A. Le Claire, about a suit for foreclosseure of a mortg'e made by you to him on property at Le Claire, state why the same was made, and its object and purpose.

Ans. 1. It was made solely for my own benefit; I wished to free myself from my liability to Le Claire.

Cross-int. 2. Did the defrauding or injuring of the plaintiff May, or the depriving him of any right, form any part of the reasons, object, or motive for said agreement, so far as you know the same?

Ans. 2. It did not.

Cross-int. 3. Were you able to carry out and complete your purchase of the property for which said mortgage was given, and to pay your notes to Le Claire therefor?

Ans. 3. I was unable to perform my part of the contract and pay my notes.

819 Rec'd my fees & milage, $2 50, of plantiff.

A. H. DAVENPORT.

Subscribed & sworn to before me by A. H. Davenport this 2nd day of Ap'l, A. D. 1863.

R. D. CONGDON,
Notary Public.

820 "EXHIBIT A."

This indenture, made this 7th day of May, A. D. 1857, Antoine Le Claire & Margaret Le Claire, his wife, of the city of Davenport, & county of Scott, in the State of Iowa, parties of the first part, and Adrian H. Davenport, of the city of Le Claire, in the county and State aforsaid, party of the second part, witnesseth that, whereas said Antoine Le Claire, party of the first part, is the owner of certain lots & parcels of land in the city of Le Claires aforesaid, situated in what is known as Le Claire's reserve, at the head of the Rock Island Rapids of the Mississippi River; & whereas the said Antoine Le Claire & wife, parties of the first part, have this day sold unto the said party of the second part all their right, title, and intrest in and to all real estate now owned by said parties of the first part situated in said reserve, and within the corporate limits of said city of Le Claire:

Now, therefor, the said parties of the first part, for the consideration of thirty-five thousand dollars, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described real estate lying and being situated in Scott County, State of Iowa, viz., all and evry lot, piece, parcel, or tract of land owned,
821 held, or claimed by the said parties of the first part (and not heretofore sold and bargained by them) situated within the limits of said Le Claire reserve, within the corporate limits of the said city of Le Claire, in the county aforesaid, including each and every interest, right, title, or claim that the said parties of the first part have in or to any real estate within the foregoing described limits, it being understood between the parties to this indenture that said Antoine Le Claire has heretofore given bonds to various parties for lots in said city of Le Claire, within the limits of real estate hereinbefore described as intended to be conveyed, which said bonds the said party of the second part assumes, and when the holders of said bonds shall pay up the balance of purchase-money yet back and unpaid thereon, the said balance of unpaid purchase-money shall belong to the said second party, and [and] the said second party, viz., said A. H. Davenport, shall execute to said bondholders deeds according to the terms of the bonds so held by them. In case the said party of the second part shall fail to ratify any contract so as aforsaid made by the said party of the first part, as a provision

822 against such default, the said Antoine Le Claire expressly reserves herein to himselfe all the right and title necessary to fulfil such contract of sale of lots within the limits hereinbefore described heretofore made by him as aforsaid, & such is the express understanding between the parties hereto; to have and to hold the lands herein and hereby conveyed, with all the appurtenances therto belonging, unto him, the said party of the second part, and to his heirs and assigns, forever, the said Antoine Le Claire hereby covenanting for himselfe, his heirs, executors, & administrators, that the said premises are free from all incumbrances; that he has full right, power, & authority to convey the same, and he will warrant and defend the title thereto unto the said party of the second part, his heires and assigns, against the claimes of all persons whomsoever lawfully claiming the same.

And the said Margaret Le Claire, wife of the said Antoine Le Claire, hereby releases and relinquishes all her right of dower in and to the premises herein and hereby conveyed.

In testimony whereof the said parties of the first part hereinto set their hands and seals on the day of the date first herein written.

(Signed) ANTOINE LE CLAIRE.
(" ") MARG'TE LE CLAIRE.

823 STATE OF IOWA, *Scott County:*

Be it remembered that on the 8th day of May, A. D. 1857, before the undersigned, a notary public in and for said county, personally appeared Antoine Le Claire, & Marguerite Le Claire, his wife, to me personally known to be the identical persons whose names are affixed to the foregoing deed as grantors, and acknowledged the instrument to be their voluntary act and deed; and the said Marguerite Le Claire acknowledged that she executed the same without fear or compulsion, and for the express purpose of relinquishing her right of dower of the premises therein convey.

Witness my hand and notarial seal the day and year above written.

[SEAL.] (Signed) J. A. LE CLAIRE,
Notary Public, Scott Co., Iowa.

Filed for record May 24th, 1857, at 10½ o'clock a. m.
J. McCOSH, *Rec.*

Book "D" of town lots, page 291.
(R. D. CONGDON, *N. P.*)

824 "EXHIBIT B."

$7,000.

On the first day of January, A. D. 1858, I promis to pay to the order of Antoine Le Claire the sum of seven thousand dollars, value received.

Witness my hand this 7th day of May, A. D. 1857.
(Signed) A. H. DAVENPORT.

$7,000.

On the first day of January, A. D. 1859, I promis to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with intrest from the 1st day of January, A. D. 1858, at 6 p'r cent. Value received.

Witness my hand this 7th day of May, A. D. 1857.
(Signned) A. H. DAVENPORT.

$7,000.

On the first day of January, A. D. 1860, I promis to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with intrest from the first day of January, A. D. 1858, at 6 per cent., for one year, after that 10 per cent. Intrest to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

$7,000.

On the first day of January, A. D. 1861, I promise to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with
825 intrest from the 1st day of January, A. D. 1858, at 6 per cent. for one year; after that 10 per cent. Intrest to be paid anually. Value recei'ed.

Witness my this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

$7,000.

On the first day of January, A. D. 1862, I promis to pay to the order of Antoine Le Claire the sum of seven thousand dollars, with intrest from the first day of January, A. D. 1858, at six per cent. for one year; after that 10 per cent. Intrest to be paid annually. Value received.

Witness my hand this 7th day of May, A. D. 1857.

(Signed) A. H. DAVENPORT.

This indenture, made this 7th day of May, A. D. 1857, between A. H. Davenport, of the city of Le Claire, of the first part, & Antoine Le Claire, of the city of Davenport, of the second part, witnesseth that the said party of the first part, for the consideration of one dollar, the receipt whereof is hereby acknowledged, as well as for the better securing of five promissory notes hereinafter described, doth by these presents
826 grant, bargain, sell, and convey unto the said party of the second part, his heirs and assigns, forever, the following described tract of real estate lying and being situated in the county of Scott, and State of Iowa, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire, known as "Le Clair's reserve," that has not been by the said Le Claire conveyed heretofore, being the property conveyed by the party of the second part to the party of the first part, by his deed of bargain and sale, bearing even date and executed simultaneously with these presents; to have and to hold said premises above described unto the said party of the second part, his heirs and assigns, forever.

Provided always, and these presents are upon this express condition, whereas said party of the first part has this day executed unto the party of the second part his certain five promissory notes, each for the payment of seven thousand dollars, the last [four] 4 with intrest from the first day of January, A. D. 1858, said notes being payable on the first days of January, A. D. 1858, 1859, 1860, 1861, & 1862, respectively, according to the tenor and effect of said notes, which said notes are
827 given for purchase-money: Now, if the said Adrian H. Davenport, his executors and administrators, shall pay or cause to be paid to the said Antoine Le Claire the said notes when due, with intrest thereon, according to the term and effect thereof, then these presents shall be void; otherwise to be and remain in full force and virtue.

In witness whereof the party of the first part has hereunto set his hand and seal the day and year first before written.

(Signed) A. H. DAVENPORT. [SEAL.]

The words "Le Claire" and "executed simultaneously," on the first page, interlined before singing.

(Signed) JOHN W. THOMPSON.

STATE OF IOWA, *Scott County, ss:*

Be it remembered that on the 7th day of May, A. D. 1857, before the undersigned, notary public in and for said county, personally came Adrine H. Davenport, to me personally known to be the identical person whose name is annexed to the foregoing indenture, and acknowledged the same to be his voluntary act and deed, for the purposes therein set forth.

828 Witness my hand and notorial seal the day and year aforesaid.

[NOTORIAL SEAL.] (Signed) JOHN W. THOMPSON.
Notary Public.

The following assignment is indorsed on the foregoing mortgage:

For and in consideration of the sum of one dollar, to me in hand paid by James May, I, Antoine Le Claire, for such consideration, as well as in consideration of an amicable and full settlement between said May and myselfe, of all matters of difference heretofore existing between us, do by these presents sell, transfer, and assign unto the said James May, his heirs and assigns, all my right, title, and intrest in and to this mortgage, and the notes secured thereby. The assignment of the mortgage and the said notes are without recourse on me.

Witness my hand and seal this 10th day of March, A. D. 1859.

(Signed) A. L. LE CLAIRE. [SEAL.]

Witness: JOHN P. COOK.

Received of Adrin H. Davenport the following promissory notes, to wit:

829 Drawer.	Amount.	Date.	Due.	Indorsed.
J. W. Buckman	361 12	M'ch 18, '56	M'ch 18, '57	23 50, Dec. 20, '58
Do	361 12	M'ch 18, '56	M'ch 18, '58	
Do	361 12	M'ch 18, '56	M'ch 18, '59	
Jas. Coe, Jas. A. Lewis, & A. J. Johnson	342 50	Dec. 9, '57	Dec. 9, '59	
J. G. Huntington	247 00	June 3, '55	June 3, '59	
Jas. Coe, Jas. A. Lewis, & A. J. Johnson	300 00	Dec. 9, '57	Dec. 9, '60	
Do do do	500 00	do	June 15, '58	$20, June 21, '58
Do do do	400 00	do	Dec. 9, '58	
Dennis Barnet, mayor	250 00	June 9, '55	June 9, '57	
Dennis Barnes, mayor	250 00	June 29, '55	June 29, '58	
Conrad Arnold	100 00	Oct. 25, '58	Oct. 28, '59	
P. M. McIntrice	343 33	Ap'l 20, '57	Dec. 20, '58	
Do	343 33	do	July 1, '58	Oct. 6, '57, $35 —
Do	343 33	do	Dec. 20, '58	June 3, '58, $40 —
John H. Suter	350 00	Ap'l 15, '57	Oct. 1, '58	July 1, '58, $40 —
Do	175 00	do	do	July 2, '58, $4 60
Andrew Black	100 00	Sep. 20, '57	Sep. 20, '58	
Andrew Black	100 00	Sep. 20, '57	Sep. 20, '59	
Anderhalter	225 00	Ap'l 20, '57	July 20, '58	
Do	225 00	do	Dec. do.	
Do	225 00	do	Jan. 1, '58	
Wm. Benton	301 42	Oct. 10, '57	Dec. 25, '57	$25 —
Do	257 33	Oct. 10, '57	July 20, '58	
Do	257 33	do	Do. 20, '59	
J. B. Morgan	60 50	do	Dec. 10, '57	

830 Drawer.	Amount.	Date.	Due.	Indorsed.
Thos. F. Pharcy	225 00	Ap'l 1, '57	Ap'l 1, '58	
Thos. F. Pharcy	225 00	Ap'l 1, '57	Ap'l 1, '59	
Thos. Crawford	186 00	Oct. 20, '56	Aug. 1, '59	
John Hawthorne	100 00	June 25, '57	June 25, '58	
Do.	200 00	....do....	Jan'y 1, '58	
Do.	100 00	June 25, '57	Dec. 25, '58	Oct. 2, '58, $10 —
Randolph Moran	233 33	Nov. 25, '57	Nov. 25, '58	Dec. 22, '58, $9 —
Do.	233 33⅓	....do....	Do. '59	
Do.	233 33⅓	....do....	Do. '60	
John C. Ayres	133 33	July 1, '57	July 1, '58	
Do.	133 33	....do....	Dec. 1, '58	
Wm. Dippen	300 00	Aug. 25, '57	Aug. 25, '58	
Do.	300 00	....do....	Do. '59	
Do.	300 00	....do....	Do. '60	

(R. D. CONGDON, *N. P.*)

831 Memorandum of an agreement made and entered into this 27th day of March, A. D. 1860, by and between Antoine Le Claire and Adrian H. Davenport, both of the county of Scott and State of Iowa, witnesseth that hertofore, to wit, on or about the 7th of May, A. D. 1857, the said Antoine Le Claire bargained and sold unto said Adrian H. Davenport certain real estate lying and being situate in the county of Scott afores'd, to wit, all that part of a piece of land lying within the present limits of the city of Le Claire, known as "Le Claire's reserve," that had not been sold and conveyed by the s'd Le Claire prior to the said 7th of May, 1857, for which the said Antoine Le Claire then and there executed and [and] delivered unto the said Davenport a deed for s'd property, for the consideration of the sum of thirty-five thousand dollars, for which consideration the said Davenport then and there executed unto the said Le Claire (5) five certain promissory notes of seven thousand dollars each, payable respectively on the first days of January, A. D. 1858, 1859, 1860, 1861, & 1862; and to secure the purchase-money for which said notes were executed the s'd Davenport then and there executed and delivered unto the said Le Claire a certain mortgage upon the same premises, which mortgage was duly filed for record in book A of town mortgages, page 352.

832 Now three of the aforesaid notes being past due, and the s'd Davenport having failed to pay the same, and being unable so to do, it is mutually agreed between the said parties that the s'd Le Claire will resume the title and possession of said property, and cancel said notes so given for the consideration money, provided the said Le Claire can perfect the title thereto by releving it from leins ceated by the said Davenport, or in consequence of judgements unsatisfied and outstanding against said Davenport.

To this end s'd Le Claire will go on and foreclose the s'd mortgage, and if at the sale of the property under such foreclosures the same shall bring more than the amount of said notes and intrest, then and in that case the s'd Davenport shall have the surplus; and if, on the contrary, the said property should sell for less than the ammount of said notes and intrest, the said Le Claire will release the said Davenport from the said notes, provided always, and it is expressley understood by and between the parties, that the said Davenport has placed in the hands of Cook & Drury a certain map or plat of the said real estate, on which is marked the portions of said land sold by Davenport, and [and] the particular

833 tracts now remaining unsold; the said Davenport covenanting and agreeing that the portion of the said plat represented by him

as unsold is free and clear, and that he hath not made any contract agreeing to sell any portion thereof.

It is understood and agreed by and between the parties that in case the said Le Claire shall obtain title to the s'd premises, that he will ratify and confirm the title to all such portions as the s'd Davenport represents as having been sold by him.

The said Davenport has this day assigned and delivered to the s'd Le Claire ceartain notes which were executed as part of the purchase-money for lots sold out of the said tract, amounting to about $16,000, including intrest, most of which said notes are passt due; and the said Davenport covenants and agrees with the said Le Claire that none of the makers of said notes have any just or legal offset to the same, unless it be for working out road tax and painting a certain house; and if it shall prove that theire are any claims against s'd Davenport which may be legally offsets againts said notes, or any of them, the said Davenport shall pay any such amount or offset to said Le Claire. It is understood
834 that the said Davenport, in selling lots out of said tract of land, has given the purchaser a bond for a deed upon payment of the balance of the purchase-money, and the said Le Claire agrees in all such casese that upon the balance of the purchase-money paid to him, the s'd Le Claire, he will make the holders or legal owners of said bonds a good title for the lot or lots described in said bonds. Nothing in this agreement shall be so construed as to bind the said Le Claire to any covenant or agreement herein contained on his part unless the said Le Claire shall succeed in obtaining a tittle to the said unsold lots so represented by the said Davenport; and in case the said Le Claire shall not obtain such title, it is understood that he shall retain the list of notes now in his hands, and as fast as he collects the same the ammount so collected shall be applied upon the said notes against the said A. H. Davenport, and in the mean time the said Le Claire shall hold the said notes so turned over to him by the said Davenport as collatteral security for the notes so held by Le Claire against Davenport.

Executed & delivered in duplicate the day and year first above written.

A. LE CLAIRE,
A. H. DAVENPORT.

Witness: JNO. P. COOK.

(R. D. CONGDON, *N. P.*)

835 Circuit court of the United States, district of Iowa.

JAMES MAY
vs.
MARGURIETE LE CLAIRE AND GEORGE L. Davenport, executors of the [of] last will of Antoine Le Claire. } Equity.

The deposition of Annie Le Claire, a witness in the above-entitled cause, taken before me, R. D. Congdon, a notary public in and for said county, at residence of Joseph A. Le Claire, in Davenport Township, Scott County, State of Iowa, on the 14th day of April, A. D. 1863, in pursuance of a commission to me directed by the clerk of the circuit court of the United States in and for the district of Iowa.

R. D. CONGDON,
Notary Public, Scott County, Iowa.

836 No. 9.—*Suppressed deposition of Annie Le Claire.*

(This deposition suppressed.)

Annie Le Claire, wife of Joseph A. Le Claire, of Davenport, Iowa, of lawful age, a witness in this cause, being first duly sworn and examined, maketh answer to the several interrogatories propounded to her as follows:

Quest. 1st. What is your name; where is your residence; if you are married, what is your husband's name? If you have children, state the name & age of each child.

Ans. 1. Annie M. Le Claire; Davenport, State of Iowa; I am married; my husband's name is Joseph A. Le Claire; I have three children; their names and ages are as follows: Joseph A. Le Claire, aged 6 years; Marguerete Izabella Le Claire, aged 4 years; & William Henry Le Claire, aged 1 year.

837 Quest. 2. Were you or were you not personally acquainted with Antoine Le Claire, of Davenport, Iowa, deceased; and if you were acquainted with him, how long have you been acquainted with him, and what relationship, if any, did he hold to your husband?

Answer 2. I was acquainted with him about seven years before his death; he was my husband's unkle.

Question 3rd. Do you or do you not know whether said Antoine Le Claire had any one for a general agent to attend and look after his business at and about Davenport? And if he had such agent, state who such agent was and where he now is.

Answer 3. I do not know whether Antoine Le Claire had any one for a general agent to attend and look after his business at and about Davenport or not. If he had such agent, I do not know who acted as such, or where he now is.

Question 4. Where [or when] did Antoine Le Claire die?

Answer 4. He died on the 26th day of Sept., 1861, in Davenport, Iowa.

Quest. 5. Are you acquainted with a farm near Davenport called Rose Bank; and, if yea, who now has possession of it?

Answer 5. I am acquainted with said farm; Joseph A. Le Claire now has possession of it.

Question 6. Did or did not said Antoine Le Claire, some time before his death, while you were riding with him in his carriage, tell
838 you that he had made a present and a deed of said Rose Bank farm to your children; and did he not also give you some peach-stones & seeds, telling you to have them planted in your children's said farm?

Answer 6. Antoine Le Claire some time before his death, and while he and myself were riding in his carriage, did tell me that he had made a present and a deed of Rose Bank farm to my children; and he did give me peach-stones & seeds, and told me to have them planted in my children's farm.

Question 7. Did you or did you not have any conversation with said Antoine Le Claire some time before his death relative to said Rose Bank farm? and, if yea, state all that he said to you relative to the possession or ownership, or conveyance, or other disposal of the same; state also how long before his death the first conversation occurred, and how many conversations he had with you on the subject; if he said anything about your children in connection with Rose Bank, relate it.

Answer 7. I had but one conversation with him relating to Rose Bank farm. I do not recollect that he said anything in relation to the

possession or ownership of the farm. He told me that he had conveyed Rose Bank farm to my children. I do not recollect the exact time of the conversation. It was some time during the summer of 1861, I think. I do not remember of ever having any other conversation with him on the subject.

Question 8. Are you or are you not acquainted with the fact that since the death of Antoine Le Claire, to wit, in the month of January, this year, (1862,) George L. Davenport has executed a deed conveying Rose Bank farm to your son Joseph A. Le Claire, junior? and if he has made such conveyance, state why he made the deed, and if your son paid for it.

Answer 8. I do know that George L. Davenport executed such conveyance at said time; at least, I think he did, although I have never seen the deed; I do not know why he made the deed; my son never paid for it, to my knowledge.

Question 9. State if any one since the death of said Antoine Le Claire has by deed conveyed Rose Bank to either of your children; and, if yea, state who is the person who conveyed it, and what did he tell you, or what did you hear him say, was his reason for conveying it; also state the age & name of the child and whether the child had any money or property to pay for it.

Answer 9. Since the death of Antoine Le Claire, George L. Davenport has conveyed Rose Bank farm to one of my children, as I am informed and believe. I have never herd George L. Davenport say anything in relation to said conveyance. The child's name is Joseph A. Le Claire, jr.; his age is six years one month & five days. He had no property or money to pay for it that I know of.

10th question. If you know, state who now has possession of Rose Bank farm, or claims to own the same.

Answer 10th. Joseph A. Le Claire now has possession of Rose Bank farm. Joseph A. Le Claire, j'n'r, is the reputed owner of it, I think.

Question 11th. State if any lawyer or other person settled with you relative to the subject-matter of what your deposition in this case would be.

Answer 11th. There has not.

Question 12th. Do you know or can you set forth any other matter or thing which may be a bennefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer 12. I know of nothing further. I wish to amend my answer to the 3rd interrogatory by saying that my husband, Joseph A. Le Claire, was in the office of Antoine Le Claire, and transacted business for him, but what his particular duties were I do not know.

ANNA M. LE CLAIRE.

Subscribed & sworn before me, by Anna M. Le Claire, this 14th day of April, A. D. 1863.

R. D. CONGDON, *Notary Public.*

STATE OF IOWA, *Scott County, ss:*

I, R. D. Congdon, notary public in and for said county, do hereby certify that Margureta Le Claire, Adrian H. Davenport, Joseph A. Le Claire, Annie Le Claire, and George Wilson were first sworn by me to testify the truth, the whole truth, and nothing but the truth, and

that the foregoing depositions by them respectively subscribed; were by me reduced to writing in their presence respectively; that they were carefully read over to them respectively, before signing; and that they were taken at the times and places specified.

In testimony whereof I have hereunto set my hand, notorial seal, this 14th day of April, A. D. 1863.

R. D. CONGDON,
Notary Public, Scott County, Iowa.

Notary public's fees, $25 00, paid by plaintiff.

R. D. CONGDON, *N. P.*

843 (Indorsed:) No. 10. Depositions of Marguirete Le Claire, Adrian H. Davenport, Joseph A. Le Claire, George Wilson, & the suppressed deposition of Anna M. Le Claire.

844 No. 10.

Copy.

State of Iowa, Scott County.

JAMES MAY
vs.
ANTOINE LE CLAIRE, LEWIS C. DESSAINT, Ebenezer Cook, George B. Sargent, John P. Cook, and George L. Davenport.

} In the district court of United States for the district of Iowa, at Keokuk.

The deposition of John Andoe, witness in the above-entitled cause on behalf of the plaintiff, taken before me, R. D. Congdon, a notary public in and for said county, at my office in the city of Davenport, county & State aforesaid, this 16th day of January, 1862, in the presence of Joseph Williams, attorney for the plaintiff, and Putnam & Rogers, attorneys for defendants Lewis C. Dessaint, Ebenezer Cook, John P. Cook, and George L. Davenport, and with the consent of said attorneys so far as to waive all objections as to notice, but no farther.

(Signed) R. D. CONGDON, *Notary Public.*

Deposition of John Andoe.

John Andoe, witness as above, being first duly sworn and examined, maketh answer to the several interrogatories propounded as follows:

Int. 1. What is your name, age, occupation, and place of residence?

Ans. 1. John Andoe; sixty-six years; in no business; county of Westmoreland, State of Pennsylvania.

Int. 2. Are you acquainted with the parties to this suit, or either of them; if so, how long have you known them?

845 Ans. 2. I am acquainted with Capt. James May; have known him more than forty years; I am not acquainted with any of the other parties.

Int. 3. Have you ever, during that time, been connected with Captain James May in business; and, if so, state what that business was, and your means of acquaintance with his circumstances?

Ans. 3. A part of that time Captain May and I were in partnership in mercantile business.

Int. 4. Were you acquainted with the circumstances of James May as to money and property, in the year 1859, say in the month of March of that year, and subsequent during that year?

Ans. 4. In the month of March I have no recollection; in the fall of 1859, I was in Davenport, Iowa, and was aware that Capt. May was in possession of notes and bonds to the amount of some ten, twelve, or fifteen thousand dollars, it might have been over fifteen thousand dollars; I had said notes and bonds in my hands and counted them over. I also know of his owning real estate in Rock Island County, in the State of Illinois, I should suppose of the value of twenty thousand dollars; I saw a part of said real estate, it was shown to me by James May; I know nothing of the title. I also knew of his owning real estate in Scott County, Iowa, I should think of the value of fifteen thousand dollars at that time. I also know of his owning real estate in Alleghenny and Westmoreland, and I think some in Washington County, in the State of Pennsylvania, which said real estate in said State was of the value of from fifteen to twenty [to twenty] thousand dollars. I was aware that he, said May, had negociated some fifteen thousand dollars of railroad stock in Pittsburgh, Pennsylvania, for the purpose of appropriating the proceeds to the removal of some mortgage on Rose Bank farm. I understood from the parties who were loaning the money, that they had made up nine thousand dollars and sent it on to Davenport by a gentleman from Pittsburgh to be paid over to some parties here for the purpose of removing mortgages on Rose Bank farm, on condition that he got or was handed over three notes for seven thousand dollars each, from Adrian H. Davenport to Le Claire, and endorsed by Le Claire as collateral. The gentleman told me that he could not get the notes from the parties having charge of them, and he went home with the money in his pocket.

846

(The whole answer after the first sentence objected to by Putnam & Rodgers, defendants' attorney, as not being responsive to the question; also all that part of said answer which purports to state the ownership by plaintiff of real estate, wherever situated, for the reasons that the witnesses' testimony is not the best evidence of such ownership, or competent evidence thereof; also all that part of said answer which purports to give the value, or the witnesses' opinion of the value, of real estate, because the witness has not been shown competent to testify as to such value, or his opinion thereof. Also to all that part of said answer which states that the witnesses knew of the plaintiff's having negociated railroad stock, because the same is immaterial, irrelevant, and incompetent; also to all that part of said answer which purports to state what the witness understood to be the purpose of such negociation, because the same is immaterial, hearsay, and states merely the inferrence or opinion of the witnesses; also to all that part of said answer which purports to state what the witness understood from the parties loaning the money, and what the gentleman by whom the money was sent on told the witness, because the same is irrelevant and hearsay.)

Int. 5. State what took place, if anything, between you and Mr. Charles Powers, the trustee named in the deed of trust, by virtue of which the Rose Bank farm was exposed for sale.

(Objectected to by defendants' attorneys. Question withdrawn by plaintiff's attorney.)

847

Int. 6. Had you any conversation with Charles Powers, the trustee named in the deed of trust which he, Powers, held as an incumbrance on Rose Bank farm; and, if so, state when, where, & what that conversation was?

(Objected to by defendants' attorney as immaterial, and because conversations between witness and said Powers are not evidence against the defendants herein, and cannot affect their rights.)

Ans. 6. I had several conversations with him on the subject some short time after the sale by said Powers of Rose Bank farm, all at the request of Captain May; these conversations took place in his office in the city of Davenport, Iowa. The conversation was generally to know what could be done to set aside the sale, to make the sale null and void. Mr. Powers at each meeting or conversation seemed to me to be extremely anxious that Mr. May should get back his farm again, & if Mr. May would pay up the amount of, I suppose, the incumbrances on it, he would get him the farm back again; that is about the amount of the general conversation we had.

(Answer objected to by defendants' attorney for the same reasons as the question, and also as stating matters which occurred subsequent to the sale by Powers of the farm; also that part of it which states that Powers seemed extremely anxious that May should get back the farm as not responsive to the question, and consisting merely of the opinion or inferrence of the witness.)

Int. 7. Do you know of any guarantee being offered to Mr. Powers, trustee above named, for the payment of the money in discharge of the deed of trust in the incumbrance on the Rose Bank farm? If so, state what it was.

(Objected to by defendants' attorney as immaterial, and not evidence against the defendants.)

Ans. 7. I offered Mr. Powers a mortgage that I held for in the
848 neighborhood of ten thousand dollars, as a guarantee that May would pay the indebtedness on the farm; he refused it, as nothing but the money would do, and if he, May, would pay the money, he would get back the farm for him.

Int. 8. Do you know anything about an acceptance of two thousand dollars, in addition to the nine thousand dollars heretofore mentioned, being furnished before the time of the sale under the deed of trust to satisfy the incumbrances against the Rose Bank farm? If so, state what you know concerning it.

(Objected to by defendants' attorneys as immaterial, and not affecting the rights of defendants.)

Ans. 8. Mr. May, at Pittsburgh, was apprehensive that he might possibly require more funds in the matter, and asked me to give him an acceptance for two thousand dollars, which I did.

Cross-examination on the part of defendants.

Int. 1. Have you any knowledge as to Mr. May's ownership of real estate, to which you have refered in answer to direct interrogatory No. 4, other than hearsay, or statements made to you by said May that he owned such property?

Ans. 1. My information was derived from him and others; I did not examine the record; the information was the same as though I should hear Mr. Le Claire owned this building we are in, or that some other person owned some other building.

(Signed) JOHN ANDOE.

849 STATE OF IOWA, *Scott County:*

I, R. D. Congdon, a notary public in and for said county, do hereby certify that John Andoe was first duly sworn to testify the truth,

the whole truth, and nothing but the truth, and that the foregoing deposition, by him subscribed, was reduced to writing by me in his presence, and was taken at the time and place specified, and was carefully read to him by me before he signed the same.

In testimony whereof I have hereunto set my hand and notarial seal this 16th day of January, A. D. 1862.

[SEAL] (Signed) R. D. CONGDON,
Notary Public.

(Indorsed:) Copy. In the district court of the United States for dist. of Iowa, at Keokuk. James May vs. Antoine Le Claire et al. Deposition of John Andoe, taken in behalf of plaintiff.

Fees of notary public, $200, paid by plaintiff.
(Signed) R. D. CONGDON, *N. P.*

850 No. 11.—*Dedimus potestatum.*

CIRCUIT COURT OF THE UNITED STATES, *District of Iowa, ss:*

To J. L. Rice, a notary public in & for the county of Lee and State of Iowa, and special commissioner of the circuit court of the United Sates for the district of Iowa, at Keokuk, Iowa:

Know ye that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with full power and authority to examine John T. King, of Keok., in the county of Lee, State and district aforesaid, on his corporal oath as a witness in a cause depending in the circuit court of the United States for the district of Iowa, wherein James May is plaintiff, and Marguerite Le Claire & Geo. L. Davenport, executors of the last will of Antoine Le Claire, and others, defendants, on the part of the plantiff upon the interrogotaries annexed to this commission. And, therefore, you are hereby commanded that at certain days and places to be appointed by you for that purpose, you do cause the said John T. King to come before you, and then and there examine him on oath upon the said interrogatories, and that you reduce such examination to writing, and return the same, together with the accompanying notice and interrogatories and this commission, under your seal, sealed up, and indorsed with the names of the parties litigant and the word "Deposition" on the cover thereof, into the said circuit at Des Moines, Iowa, to the clerk thereof, with all convenient speed.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 25th day of January, 1863, and in the 87 year of the independence of the United States of America.

[SEAL.] Attest: W. G. WOODWARD, *Clerk.*

851 *Deposition of Jno. T. King.*

Deposition of John T. King, of the city of Keokuk, Lee County, Iowa, a witness of lawful age, produced, sworn, and examined on the 13th day of April, 1863, at the office of J. L. Rice, in said city, by virtue of a commission issued out of the circuit court of the United States for the district of Iowa, directed to J. L. Rice, notary public, and special com'r of said court, and hereto attached, and to be used in a cause pending in said court, wherein James May is plantiff, and Marguirete Le Claire & Geo. L. Davenport, exe't's of the last will & testament

of Antoine Le Claire, and others, are defendants, on the part of plaintiff.

John T. King, a witness of lawful age, being by me first duely sworn, on oath, in answer to the following interrogatories, deposes and says:

Int. 1st. How old are you; where is now your residence, and what is your business or profession?

Answer. I am about thirty-four or thirty-five years of age; my residence is Keokuk, Iowa; my profession is attorney at law.

Ques. 2nd. Where did you reside during the months of Feb'y, March, Ap'l, May, June, & July in the year 1859?

Ans. In Davenport, Iowa.

852 Ques. 3rd. Are you acquainted with the plantiff & defendants in this suit, or any of them? and, if yea, state which of them you are acquainted with, and how long you have known those you are acquainted with; also, were you acquainted with Antoine Le Claire, late of Davenport, Iowa, deceased?

Ans. I am acquainted with plantiff & defendants, and have known them all since the fall of 1856; I had been acquainted with Antoine Le Claire, dec'd, since that time.

Ques. 4. Are you or are you not acquainted with a farm or parcel of land in Scott County, Iowa, called 'Rose Bank;" and, if yea, where is it located, and what was the value of it in the early part of 1859, say in the months of Feb'y & March, 1859?

Ans. I am acquainted with it; it is located about a mile & a half north of the city line of Davenport, on Duck Creek; I can not form any estimate of the price it would have brought in the market at that time, as there was no demand for real estate in that region at that time.

Ques. 5th. Do you or do you not know who had the possession of said farm at & prior to the 8th day of March, 1859, and who had or re-

853 ceived possession of it at and subsequent to that date? If you do know, state the particulars of your knowledge.

Ans. James May had the possession of it up to that time; I believe it was on that date that May made a settlement with Antoine Le Claire, and made him a deed for the Rose Bank farm; I took the acknowledgement of the deed as a notary public, and the next morning I put Antoine Le Claire in possession of said Rose Bank farm, through his nephew Joseph A. Le Claire, his then agent & business clerk, as I was James May's agent & business clerk, by going out with him in Antoine Le Claire's wagon & team; Antoine Le Claire remained in possession of it for about one year after that time, to the best of my knowledge; I do not know of my own knowledge who had possession of it afterwards, but herd that L. C. Dessaint, Geo. L. Davenport, & others whose names I do not recollect, had the possession, I believe; Antoine Le Claire had possession of it after Geo. L. Davenport; it is now in possession of Joseph A. Le Claire.

854 Ques. 6th. Do you or do you not know of said farm called "Rose Bank" having been advertised for sale in 1859, by one Charles Powers, as trustee; and, if yea, did you or did you not hear any conversation pass between plantiff & said Powers, on the same day the said property was advertised to be sold? and, if you did, state what the conversation was, where it occurred, on what day, and in what hour of the day it occurred; and also if any other person or persons partisipated in that conversation; and, if they did, what did they say or do?

Answer. I do know it was so advertised by Charles Powers, as trustee. Capt. May was absent at Pittsburgh at the time, in June & the fore

part of July, 1859, and I was attending to his business in his absence. In the latter end of May or beginning of June, Charles Powers, said trustee, droped me a note requesting me to call at his banking-house. I did so, when he informed me that the deed of trust on "Rose Bank" farm, of which he was trustee, was due, but that the
855 interest was all that was required, and that they, Tallman, Powers & McLean, (James May's bankers,) had forwarded the parties in the East who owned the deed of trust the interest, and requested me to hurry up James May to pay them what they had forwarded. I then went to St. Louis and was gone some three or four weeks, and when I returned Rose Bank farm was advertised for sale under said deed of trust, by said Charles Powers. Mr. Powers again sent for me, and told me he was going east, and requested me to give him Captain May's address. He said he intended to go by way of Pittsburgh, and see Captain May. He was absent about two weeks, and when he returned he told me that Capt. May had all the arrangements made to get a loan of fifteen thousand dollars when he left Pittsburgh, and that he expected him every day. On Monday, the 18th of July, Mr. Powers requested me to write Capt. May with reference to the payment off of the deed of trust. I told him I would wait another day and see if he would not come. The next morning, the 19th, Capt. May arrived at home,
856 and had with him an attorney from Pittsburgh, by the name of James M. Gallagher, who had with him nine thousand dollars—part of said loan raised, as I understood it, for the purpose of clearing "Rose Bank" farm from encumberances. About one o'clock, on the 20th—the day of the sale—I called at Mr. Powers' banking-house, and enquired if Capt. May had been there. Mr. Powers told me he had, and had gone to the Le Claire House to bring the said attorney and pay over the money. I then went to the Le Claire House and found Capt. May and Mr. Gallagher, and returned with them to the banking-house. Mr. Powers invited us into the back office. Mr. Gallagher then informed Mr. Powers that the checks or drafts which he held called for currency, but that he was instructed by Mr. Schully, cashier of the trust company in Pittsburgh, to let him know if those drafts were not accepted, and he would make them payable in Pittsburgh funds. It was then after two o'clock, and it was found that the matter could not be settled up that day. Capt. May requested Mr. Powers to postpone the sale for two or three days, until the matter could be properly setled. About that time Mr. Powers jumped up, looked at his watch, and say-
857 ing he had other sales to mak before three o'clock, picked up his hat and some papers, and started for the court-house. There was no one present at that interview but Mr. Powers, Mr. May, Mr. Gallagher, and myself, except once, I believe, Mr. Powers' book-keeper steped in for a moment & handed Mr. Powers a paper. I then told Capt. May that I feared he was going to sell the place. Capt. May laughed at me, but I was determined to see, and started for the court-house, and got there just as he was offering the Rose Bank farm for sale. I told Mr. Powers it was a shame to sell a man's property when he had the money then to pay the claim upon it. "Well," said he, "deposit the draft here before three o'clock, and I will wait until five minutes of three." I told him I had not time to get them there within that time. It then lacked fifteen minutes of three by my watch, & twenty-three minutes of three by his. "Yes," said he, "you have; there is John P. Cook's buggy, take that." I told him I would not do it. I then started on foot, and walked as fast as I could to Davison & True's office, where I ex-
858 pected to find Mr. Gallagher, but while on [on] my return to the

court-house I met Mr. Powers & others who had attended the sale at Davies' lumber-yard. I asked Mr. Powers if he had sold the farm. He said it was struck off to L. C. Dessaint, but that he had it in his controle, and he intended to keep it so. He then told me to call in the morning, before business hours, at 8 o'clock, and we would settle it up, or an expression to that effect. The same night I went to Mr. Powers' house to see if I could make any further arrangements. I told Mr. Powers then & there that Capt. May had drafts for nine thousand dollars, a fact unknown to him until that time, as he required only six thousand dollars on his claim. There were two judgment liens against Rose Bank farm, the exact amount of which I cannot state, but the two would not exceed four thousand dollars. I proposed to Mr. Powers, as he had controle of the two large claims, that I would give him the nine thousand dollars in drafts, and give him real estate security in
859 the county & city if he would wipe out all the encumberances against Rose Bank farm, to enable Capt. May to give Antoine Le Claire a clear title to the farm, and receive in return the notes of Adrian H. Davenport, according to the tenor of the contract between the said parties. This Mr. Powers agreed to do, and it was arranged then and there that Mr. Gallagher and I should call in the morning at 8 o'clock at his office. Mr. Powers then told me for the first time that the farm was struck off for five thousand dollars. The next morning Mr. Gallagher and I called at Mr. Powers' banking-house, before banking hours, and then exhibited to him a list of several city lots, some farming land in the county, and three thousand dollars in notes secured by mortgage on city property, as collateral, wich Mr. Powers was satisfied with, and the arrangement of the night previous was renewed in
860 the presence of Mr. Gallagher. Mr. Gallagher then went to Cook & Sargent to inquire if they, as custodians of the notes & mortgage of Adrian H. Davenport to Antoine Le Claire, was willing to give up the said notes & mortgage if the encumberances of the Rose Bank farm were cleared off. He reported to us that they said they were if the title was good, and that they would send a man to examine it. About ten o'clock of the same day Mr. Powers called at my office and told me that Cook & Sargent had not sent a man to examine the title, and he understood it was not their intention to do so, nor to give up the notes & mortgage when the farm was cleared. The plantiff did not say much during the interview at which he was present in Mr. Powers' back office. I remember that at one time he and Mr. Powers got at prety high words about a lack of confidence in regard to the result of a postponement of the sale.

861 Ques. 7. Do you or do you not know of said farm having been sold under said trustee advertisement? and, if yea, state how you came to be present at said sale; and state when and where said sale took place. Who were present at the sale; what were the terms of sale as announced by the trustee; what the trustee may have said to you or any one else relative to the sale. Say at or about the time & place of the sale. Who were the bidders at the sale; and to whom was the farm struck off?

Answ. I was not present when the farm was struck off under the trustee advertisement, and only know that it was sold from what I herd from others, as stated in my last answer. I do not know who were present at the sale except R. D. Congdon, Joseph A. Le Claire, & John P. Cook. I was not present when the farm was put up for sale and the terms made known. All I know about the terms I learned from Mr. Powers afterwards, who told me that he made a condition

862 that the money should be paid before five o'clock that evening. I was not present when there were any bids made, from the fact that I went there after the farm was put up, and did not stay probably more than three minutes, and during that time the trustee was occupied in taking to me, as stated in the preceding answer. I went partly to see whether he really was going to sell the property, and also to prevail upon him, if possible, to postpone it, if such was his intention, until the matter could be adjusted. The sale took place at the court-house, Davenport, Iowa, on the 20th of July, 1859, between two & three o'clock p. m. As to the conversation between the trustee & myself, at or about the time of the sale, I asked Mr. Powers to postpone the sale, and told him it was a shame to sacrifice a man's property when he had the means there to satisfy the claim upon it. "Well," said he, "deposit the
863 draft here before three o'clock." I told him I had not time to do it. "Yes," he said, "you have; there is John P. Cook's buggy, take that." I said I would not do that. Said he, "I will wait until five minutes of three o'clock." It then lacked fifteen minutes of three by my watch and twenty-three by his. I then left to endeavour to get the drafts there in time, but before I got back the farm had been struck off, as I learned from Mr. Powers himself. I do not know who bid at the sale, or to whom it was struck off, except by hearsay. I understood that Joseph A. Le Claire, John P. Cook, & L. C. Dessaint bid upon it, and that it was struck off to the latter.

It being 12¾ o'clock p. m., the further taking of the testimony of the witness John T. King is adjourned until 2 o'clock this afternoon.

Keokuk, Ap'l 13th, 1863.

[SEAL.] J. L. RICE,
Notary Public, Lee Co., Iowa, & Special C'm'r
C. C. U. S. for District of Iowa.

864 It being 2 o'clock p. m., April 13th, 1863, the further taking of testimony of John F. King is resumed.

J. L. RICE,
Notary Public, Lee Co., Iowa, & Special Commissioner
C. C. U. S. for District of Iowa.

Quest. 8th. State what, if any, conversation passed between you and said Powers after said sale, and before he executed a deed conveying said farm under said sale.

Answer. I had several conversations with Mr. Powers after said sale; the first of which was on the street, coming down from the court-house directly after said sale. In that conversation he told me, in answer to the question, "What had been done?" that the farm had been struck off to L. C. Dessaint, but that he had it in his controle and meant to keep it so, and requested me to come into his office the next morning before business hours and fix the matter up. This was in presence of R. D. Congdon, esq., who was walking in the street with us at the time. I had another conversation with him that evening at his residence, corner of 9th & Le Claire streets, in which it was agreed between
865 us that I, on the part of James May, was to give him the nine thousand dollars in drafts before mentioned and real estate security in Scott County & city of Davenport, for the ballance necessary to clear the Rose Bank farm from encumberances. He, on his part, agreed to the proposition, and we parted with the full understanding that we were to meet at 8 o'clock at his office the next morning to con-

sumate the transaction. We met next morning at the appointed time, and I furnished him a list of the city lots and lands which I proposed to give him as security, together with three thousand dollars of notes secured by mortgages in the city, which were acceptable to him, and we then renewed the arrangement of the night before in presence of Mr. Gallagher. I understood from Capt. May & Mr. Gallagher, who had gone to see Messrs. Cook & Sargent in reference to the matter, that they refused to give up the mortgage & notes of Adrian H. Davenport unless L. C. Dessaint wold release whatever claim
866 he had obtained on the farm by virtue of the sale of the day before. Then, for the purpose of assertaining what Mr. Dessaint wished to do in the matter, I got Mr. Powers to go and see him. Mr. Powers reported this answer: "Tell him that this little Frenchman intends to stand on his legal rights all the time." I asked Mr. Powers, who was a lawyer, if he considered that Mr. Dessaint had any legal right to the farm. His answer was, "None in the world;" and, said he, "It places Captain May in a better position, and I will be a good witness." "But," said I, "he will make you a party in the case." "I don't care," said he, "put me on the stand and I will tell the truth." In a couple of days after which we had another conversation; I went to him and enquired if he thought there was any hope of an amicable adjustment, and said he, "I know there is not, and to shew you how utterly futile any further effort would be, I will state that they have offered for the other mortgage lien a note payable in New York on short time, with good interest, endorsed by Cook & Sargent, Geo. L. Davenport,
867 Antoine Le Claire, G. C. R. Mitchell; and, I guess," said he, "Lewis Maclot would endorse it too, which would be better to me than the money, as it would draw good interest." I asked him if they wanted to cancel the mortgage. He said, "No," they wanted a transfer of it.

Quest. 9th. Do you know, or can you set forth, any other matter or thing which may be a bennefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I cannot think of anything more.

Cross-interrogatories filed by defendants' solistor.

Cross-quest. 1st. What relation or connection are you to the plantiff; how long have you resided where you now reside, and does not the plantiff reside with you, or has not he so resided during a considerable portion of the past year?

Answ'r. I am a son-in-law of the plantiff; I have resided here since Nov., 1861; the plantiff does not reside with me, and has not
868 since the fall of 1859.

X-ques. 2nd. How long have you been engaged in your present occupation or profession; how many and what different ocupations or professions have you been engaged in during the last five years, and at how many & what different places have you pursued the same; at whose instance, if any one's, did you remove your residence to Keokuk; are you in any manner connected in business with the plantiff's solisitor, or do you ocupy the same office with him?

Ans. I have been engaged in my present ocupation since May, 1862; I have been a newspaper editor in that time, that is all up to the time I commenced studying law, when I moved here; I published a news-

paper in Le Clair, Davenport, & Muscatine; I removed my residence here at my own instance, and at no other person's; I am not, & never have been, connected in business with plantiff's solisitor, unless it be Hon. Joseph Williams, with whom I was connected in law business for a few months, but whether he is the person refered to I do not
869 know; I am not connected in business with any person, and have no one in the office with me.

X-quest. 3rd. What part have you taken, if any, in getting up or carrying on this suit; either in preparing, copying, or printing papers, or rendering any other services? If any such services have been rendered, have you received any remuneration therefor; or have you made any contract for such remuneration contingent on the event of this suit, or otherwise?

Ans. I have taken no part in getting up or carrying on this suit in any way, and have received no remuneration, or made any contract for any; I may possibly have copied some papers, however, but do not recollect. I did publish Powers' testimony, taken in the case of Davenport vs. May, in the Le Claire Register, but the type was set up, and belonged to the "Port Byron Times" office; & Mr. Ober, the editor, I presume, received the pay. I received none.

X-quest. 4. State at what places, and how long, if at all, you & plantiff have resided togather during the last six years; where does
870 the plantiff now reside; what is his business or ocupation, if any; where does he spend most of his time; has he any family or house, or setled place of abode; if so, where?

Ans. We resided togather on Rose Bank farm from July 14th, 1857, to the fall of 1858; we then resided togather in Davenport to the fall of 1859. Since that time we have not resided togather at all. Plantiff now resides in Rock Island, Ill's. I don't know that he has any business ocupation; cannot say where he spends most of his time; I do not know how he is situated at Rock Island, whether he keeps house or not. His boys are there, & his daughters are going to school at the convent in this city, & boarding there.

Quest. 5. Are not both the plantiff May & yourself wholly insolvent; and have you not been so for some time? If you answer in the negative, state whether you, or either of you, have been in the habit of meeting and discharging all your liabilities for several years last
871 past, and whether there are not judgments against both of you which have not been, and cannot be, collected.

Answer. As to Capt. May's solvency I do not know, and as to myself I decline to answer the question; I decline to answer any farther.

X-ques. 6th. If you state that you heard a conversation between said May & said Powers on the day of said trustee's sale of said farm, state whether it was before or after the sale; how came you to be present at it; was you present at said May's request or instance, and for what purpose? State the names of all the parties present.

Ans. The conversation was before the sale. I went to see whether Powers intended to sell or not. I did not go at May's request or instance; cannot state the names of all who were at the sale. I have already stated all I remember seeing.

Ques. 7th. Have you or not stated the whole of said conversation in your direct examination, and do you swear that you have stated it accurately; did you make any note or memorandum of [of] said
872 conversation at the time, or shortly afterwards?

Ans. I have, as nearly as I can recollect. I made a memorandum of the whole transaction about the time; probably the next week.

X-ques. 8th. How many times have you talked over said conversation, or about your testimony in this suit with said May, and when last?

Ans. I have not talked it over with him at all that I remember of.

X-ques. 9. If you state that you were present at the trustee's sale of said farm, state whether you were so present at the request or instance of said May, and for what purposes. If at his request or instance, state when such request was made.

Ans. I was not there at his request or instance, nor for any other purpose than the one already stated.

X-quest. 10th. If you undertake to state the terms of sale as announced by the trustee, state whether you took them down in writing at the time or whether you depended on your memory to give them, and whether you now swear that you state them, and all that trans-
873 pired at the sale, with entire accuracy.

Ans. I have not stated the terms of sale either from memory or noting the fact at the time. I understood from Mr. Powers that the sale would be made subject to a prior mortgage, and the condition heretofore named.

X-ques. 11. State the names of all the persons present at the taking of this your deposition, and state whether you have seen or herd the interrogatories put to you, or any of them, at any time previous to your answering the same; and, if so, when. State with whom, if any one, you have talked about your testimony herin, and when.

Ans. J. L. Rice, the commissioner, and myself are and have been the only [the only] persons present. I have not seen or herd the interrogatories put to me, or any of them, previous to answering the same. I have not talked to any one, to my knowledge, except Mr. Miller, who asked me, about a year ago, what I could prove.

JOHN T. KING.

Subscribed & sworn to by the said John T. King, before me,
874 and in my presence, this 13th day of April, 1863.

[SEAL.] J. L. RICE,
Notary Public, & Special Commissioner
C. C. United States of Dist. of Iowa.

STATE OF IOWA, *Lee County, ss:*

I, J. L. Rice, notary public in & for said county, and special commissioner of the circut court of the United States for the district of Iowa, at Keokuk, appointed to take the deposition of John T. King in a cause pending in said court, wherein James May is plantiff, & Marguerite Le Claire & Geo. L. Davenport, executors of the last will of Antoine Le Claire, and others, are defendants, on the part of plantiff, do hereby certify that in pursuance of the commission hereto attached the said John T. King personally appeared before me, at my office in the city of Keokuk, Lee Co., Iowa, on the 13th day of Ap'l, 1863, at the hour of 10 o'clock a. m., said time and place having been appointed by me for the taking of said deposition; that said witness was by me first duely sworn in the above-entitled cause; that the foregoing interrogatories were by me then written out, and the answers thereto reduced to writing by me, and inserted immediately underneath the respective inter-
875 rogatories; that the taking of said deposition was adjourned by me from 12¾ o'clock p. m. to 2 o'clock p. m. of said day, when it was resumed and continued until 4½ o'clock of same day, when it was closed; that said interrogatories & answers were then read over by my to said witness, and then and there by him subscribed and sworn to in

the usual manner, in my presence, and that neither of the parties, nor their agents or attorneys, were present at the taking of said deposition.

In testimony whereof I have hereunto set my hand an official seal this 13th day of April, 1863.

[SEAL.]

J. L. RICE,
Notary Public, & Special Com'r
C. C. U. S. for District of Iowa.

[Stamp: J. L. Rice, Ap'l 13, '63.]

Commissioner's fees	$4 50
Witness	$1 00
	$5 50

J. E. RICE, *Com'r.*

876 (Indorsed:) Deposition of John T. King.

877 Circuit court of the United States, district of Iowa.

I, W. G. Woodward, clerk of the circuit court of United States in and for the district of Iowa, hereby certify that the foregoing papers contain and are a full, true, and complete transcript of the depositions Charles Powers, Joseph A. Le Claire, Mrs. Marguerite Le Claire, Harvey Leonard, George Wilson, James Lindsay, Adrian H. Davenport, Mrs Annie Le Claire, John Andoe, & John T. King, and of the captions and certificates of the commissioners before whom the same were taken, and of the exhibits attached to the deposition of Adrian H. Davenport, as fully as the same now remain on file in my office.

In testimony whereof I hereto set my hand and seal of the said circuit court this the 10th day of January, A. D. 1867.

[SEAL.]

W. G. WOODWARD,
Clerk C. C. U. S., Iowa.

878 No. 12.

JAMES MAY
vs.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } No. 25, eq.

MAY 22, 1863.

This day come the respondents, by their solicitors, and move that the court suppress the several depositions taken by the complainant, and now on file in this cause. And the court being advised in the premises, doth adjudge and order that the deposition of Annie Le Claire be suppressed, for the reason that it appears that the said Annie is the wife of Joseph A. Le Claire, one of the def'ts in suit; also that the deposition of John Andoe, taken after the death of Antoine Le Claire, and before the suit was revived against his executors, be, and it is hereby, suppressed.

And the solicitor for the def'ts, waiving his objections to the remaining depositions taken by the pl'ff in this cause & filed, and consenting that they be regarded and held, on the hearing of this cause, as though taken by the proper officers, upon proper authority, & within the period prescribed by law, it is—

879 No. 9.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire, and others. } In equity.

The following papers consist of—

1st. Deposition of M. D. Snyder.
2d. Do. of George H. Parker.
3d. Do. of R. D. Congdon.
4th. 2d do. of Adrian H. Davenport, & resumed.
5th. Do. of R. D. Congdon, resumed.
6th. 2d do. of George Wilson, & resumed.
7th. Do. of A. H. Davenport, resumed.

880 In circuit court of the United States for the district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT & MARGUERITE Le Claire, executors of the last will of A. Le Claire, dec'd, & others.

881 No. 1.—*Deposition of M. D. Snyder.*

Qust. 1. What is your name, age, occupation, and place of residence?
Ans. M. D. Snyder; 31 years; deputy clerk of the district court of Scott County, Iowa; reside at Davenport, in said county.
Qust. 2. Are you acquainted with the parties to this suit, or either of them; if so, how long have you known them?
Ans. I know all the parties; have known some of them for the last five years, and some of them for ten years.

The further taking of this depositions is adjourned to January 12th, 1864, at 10 o'clock a. m.

R. LINDERMAN, *Commissioner.*

882 JANUARY 12, 1864—10 *o'clock a. m.*

Adjourned till 2 o'clo'k p. m.

JANUARY 12TH, 1864—2 *o'clock p. m.*

The pl'ff's att'y files with the commissioner certified copies of the bill and answers in this cause, and the examination of witnesses resumed.
Pl'ffs waive the further examination of M. D. Snyder for the present.

No. 2.— *Dep. of G. H. Parker—direct int. No.* 1 *to No.* 79.

George H. Parker, att'y, &c., produced and sworn on the part of the plantiff:

Qust. 1. What is your name, age, place of residence, and occupation?
Ans. Geo. H. Parker; 33 years of age; reside at Davenport; am lawyer.

Qus. 2. Are you acquainted with the parties to this suit, or either of them, and which of them?

Ans. I am acquainted with them all.

Qus. 3. Where were you residing in 1859 & 1860?

Ans. At Davenport, Scott County, Iowa.

883 Qust. 4. Were you acquainted with Charles Powers in his lifetime?

Ans. I was.

Qust. 5. In what business was he engaged in 1859?

Ans. As a member of the firm of Tallman, Powers & McLean, who were doing a banking business.

Qust. 6. State whether or not, prior to his death, an action in equity had been commenced in the district court in Scott County, Iowa, by the defendant George L. Davenport, against the complanant, James May.

Ans. I think there had been such an action commenced.

Qus. 7. What was the subject-matter of that action, or for what purpose was it commenced?

Ans. It was an action brought to quiet title, I think, to what was known as the Rose Bank farm.

884 Qus. 8. Can you state about when it was commenced?

Ans. I think it was some time in the year 1859; cannot tell deffenately without refering to the papers.

Qust. 9. State, if you know, who was the att'y for the defendent in that suit.

Ans. Messrs. Parker & Edwards were the att'ys of record.

Qust. 10. Who were the att'ys for the pl'ff in that suit?

Ans. Messrs. Putnam & Leake.

Qust. 11. State now whether your recolection is refreshed so that you can give the commencement of the suit. If so, give it.

Ans. I find by looking at the papers that the petition was filed January 13th, 1860.

Qust. 12. State when that cause was finally disposed of in the district court; and in what way?

(Objected to by def'ts' att'y because the record is the best evidence.)

885 Ans. At the February term, 1861, by dissmissal or withdrawal of the cause of action by the pl'ff.

Qus. 13. State whether or not there was any pleading filed on the part of the defendant in that suit; and, if so, what?

(Objected to on the part of the defendants for the same reason as to last interrogatory.)

Ans. There was a cross-bill and answer by James May; also a motion for a change of venue.

Qust. 14. What was the number of that cause on the docket in the district court?

(Objected to for the same reason as stated to int. 12.)

Ans. 5420.

Qust. 15. State whether you, as attorney for the def't, procured the taking of the deposition of Charles Powers in that case; and, if so, before whom was the same taken?

(Objected to for the same reason stated to int. 12, also as immaterial.)

886 Ans. I caused the deposition of Charles Powers to be taken, but not exclusively for use in that cause or with referance to it, before William Hall, a notery public.

Qust. 16. State who, if any one, appeared at the taking of those depositions as the att'y for Davenport.

(Objected to by def'ts for the same resons as to qust. 15.)

Ans. J. B. Leake, a member of the firm of Putnam & Leake.

Qust. 17. State whether Leake at this time was a partner of Putnam, one of the attorneys who commenced the suit.

(Objected to by def'ts as immaterial.)

Ans. He was.

Qust. 18. You state that the deposition of Powers was not taken solely with reference to that suit. State for what other purpose it was taken.

(Objected to by def'ts because the deposition is the best evidence, & as immaterial.)

Ans. It was taken for the purpose of perpetuating the testimony
887 of Charles Powers, concerning the sale of property known as the Rose Bank farm.

Qust. 19. State whether these depositions were taken in a case between the parties to that suit of Davenport against May, or whether they were taken in the maner required by the practice to perpetuate testimony.

(Objected to by def'ts for the same reasons as the last qust., and also as leading.)

Ans. They were taken (as I said before) to be used in that case or in any other case concerning the sale of the said property. My recolection is that there was no written notice served upon Messrs. Putnam & Leake, but I explained to Mr. Putnam, who I understood to be att'y of Antoine Le Claire & Geo. L. Davenport, the object in taking the depositions. I do not know that they were taken in accordance with any settled practice.

(Answer objected to by def'ts because it is not responsive to the question.)

Qust. 20. State whether the deposition was taken upon notice, or by consent without notice.

888 (Objected to by def'ts because the deposition is the best evidence, and is immaterial.)

Ans. My recolection upon that point is not very distinct.

Qust. 21. At the time of taking this depositions, state whether Antoine Le Claire, or his attorney, so far as you know, had any notice that there was to be a controversey between him and Capt. May concerning the Rose Bank farm.

(Objected to by def'ts as immaterial.)

Ans. I know nothing about Antoine Le Claire's personally having notice. Charles E. Putnam & M. John P. Cook, both of whom I understood to be the attorneys of Antoine Le Claire, had notice at the time of taking the depositions, that James May would not submit to the sale of the property known as the Rose Bank farm without a legal adjudication of his rights in the premises.

889 Ques. 22. State what notice Putnam had, if any, at the time of taking this deposition that it was to be used in a contest between his cliant, Mr. Le Claire, & James May, or that your object in taking it was to use it or have it used between those parties.

(Objected to by def'ts as immaterial and as assuming what has not been proved.)

Ans. I cannot answer the question fully without explaining the manner in which the deposition was taken.

Qust. 23. Explain fully then the manner and circumstances under which the deposition was taken so far as to enable you to give a full answer to the last question.

(Objected to by def'ts, because the deposition is the last evidence as to the manner in which it was taken, and also as immaterial.)

Ans. After the sale of the Rose Bank farm under the deed of trust by Charles Powers, I was employed as the attorney for James May to effect a settlement of the matters in dispute between him and Antoine Le Claire. Knowing Mr. Chas. E. Putnam to be council and advisor
890 of M. Le Claire in certain matters, I had frequent conversations with him for the purpose of accomplishing a settlement of the same. I think he told me one time that he was not the attorney of M. Le Claire in this transaction, but that Mr. John P. Cook represented M. Le Claire's interest. I then went to Mr. Cook who refered me to Mr. Putnam. After this suit was commenced by Geo. L. Davenport to quiet title, and before the cross-bill and answers were filed, at the solicitation of James May, who was fearfull that Mr. Charles Powers might die and he would lose his testimony, I agreed with Mrs. Powers upon a day when it would be convenient to him to have his testimony taken, and notified Mr. Putnam, who told me that I need not be at the trouble of serving a written notice on him of the time and place of taking Mr. Powers' deposition. I explained to him the object of taking the deposition, being to preserve the testimony of M. Powers concerning the sale of Rose Bank farm; there was nothing said that I remember of about a contest between James May & Antoine Le Claire further than this: Antonine Le Claire had made
891 an agreement to give him (James May) certain property in settlement of matters between them and in further consideration that the said May should give him, the said Le Claire, a title to Rose Bank farm, free of all incumbrance. I said to M. Putnam that I believed one object in making the sale of the Rose Bank farm by Charles Powers was to prevent James May from complying with his part of the agreement, and that M. Le Claire or his attorneys were a party to the transaction.

(Ans. objected to by def'ts because it is immaterial & not responsive to the question, and so far as it states conversations with M. Putnam, because the same is not competent evidence against these defendants or any of them; so far as it states a contract between said May & said Le Claire, it does not appear that the witness had any knowledge whatever upon the subject.)

The further taking of these deposition is here adjourned till to-morrow, January 13th, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

892 WEDNESDAY, *January 13th*, 1864—9 *a. m.*

Examination of Geo. H. Parker resumed:

Qust. 24. In this interview with Putnam, was any time agreed upon for taking the deposition of Powers; and, if so, was it the day suggested by Powers or some other day?

(Objected to by def'ts as immaterial.)

Ans. I think there was a day agreed upon, and that it was the day suggested by Mr. Powers.

Qust. 25. Was there anything said in this conversation in regard to waiver of written notice of taking the deposition; and, if so, what?

(Objected to as immaterial.)

Ans. I understood from the interview refered to, that written notice would not be required, but cannot give the conversation.

Qust. 26. State whether or not the deposition of Powers was taken on the day arranged for the taking of the same between you and Putnam.

893 (Objected to by def'ts as immaterial.)
Ans. I think it was commenced on that day.

Qust. 26½. State whether Mr. Leake, who appeared as you have stated at the taking of the deposition, did or did not attend during the taking of the same.

(Objected to as immaterial.)

Ans. I think he was there a portion of the time.

Qust. 27. State whether or not he was there at the commencement of the taking.

(Objected to as immaterial.)

Ans. I do not remember.

Qust. 28. State whether the paper now presented and shown you is a copy of the deposition of Powers refered to.

(Objected to by def'ts as immaterial.)

Ans. It purports to be a copy, but I never have compared it with the original.

894 Qust. 29. Please look at the paper now shown you, and state whether or not it is the original deposition of Powers refered to, taken at that time.

(Objected to as immaterial.)

Ans. I have examined the paper refered to. It is the original deposition.

(The said deposition is here offered in evidence, and is annexed by copy marked Exhibet "A."

The said exhibit is objected to by def'ts' concil as immaterial and as uselessly encumbering the record, and is not competent evidence in this suit.)

Qust. 30. Please examin the caption to that deposition, and state whether or not on such examination your recolection is refreshed as to the presence or absence of Mr. Leake at the time the notary commenced taking that deposition.

(Objected to as immaterial.)

Ans. I have examined the caption of the deposition refered to.
895 My impression is that Mr. Leake was present at the commencement of the taking of the deposition.

(Answer objected to as not responsive to the question.)

Qust. 31. In this conversation with Putnam, in which you stated to him the object which you had in taking this deposition, state whether or not Putnam objected to the perpetuation of the testimony proposed on the ground that he was not attorney for Le Claire, or upon any other ground; and, if he did, state upon what ground.

(Objected to by def'ts as immaterial, because the said conversation is not evidence against these defendents, or any of them; and as leading, the witness having already stated the conversation in question.)

Ans. I do not recolect at that time distinctly, but my impression is that he did not make any objection to taking the deposition.

Qust. 32. State whether in these conversations mentioned as
896 having taken place between you and Putnam, for the purpose, as you have stated, of effecting a settlement in regard to the controversy about Rose Bank farm, Putnam expressed either a willingness or an unwillingness to have the matter arranged, so far as Le Claire was concerned, and what he said in reference to adjustment of it, if anything, so far as Mr. Le Claire was concerned.

(Objected to as immaterial, & because said conversations are not evidence against the defendents, or any of them, and as leading.)

Ans. My recolection is that he expressed himself as anxious to have

the matter arranged without suit between Mr. May and Mr. Le Claire. I think he said several times, if Mr. May would remove the incumbrance from the Rose Bank farm, Mr. Le Clare would perform his part of the agreement.

Qust. 33. State what you know, if anything, in regard to Putnam's having acted as the attorney for Le Claire in causes in which Le Claire was interested prior to the date of this conversation.

(Objected to as immaterial.)

897 Ans. I cannot now call to mind any particular case in which Mr. Putnam acted for Mr. Le Claire prior to this time, but know that he was generally reported to be his attorney.

(The last clause of the answer objected to as not responsive to the question & as hearsay.)

Qust. 34. Do you know who drew Le Clair's will? If so, state.

(Objected to as immaterial and frivelows.)

Ans. I do not.

Qut. 35. State whether you recolect of the sale or pretended sale of the property known as Rose Bank, some time in the year 1859; and, if so, by whom was the same sold, and under what authority?

(Objected to as seeking to prove by parole matters which are susseptable of documentary proof.)

Ans. Only from general report, and from conversations with Mes. May, Charles Powers, & John P. Cook.

898 Qust. 36. State if you learned from the defendant John P. Cook anything in regard to the sale or pretended sale, or the authority under which it was made, or the time when it occured; and, if yea, state what he said.

(Objected to for the same reason as the last interrogatory.)

Ans. I learned from him that the property was sold in pursuance of a deed of trust executed by James May to Charles Powers as trustee. I have no distinct recolection as to what he said about the time when the sale did take place.

Qust. 37. State whether this conversation with Cook was about the time of the said sale or otherwise.

Ans. My impression is that it was a short time after the sale.

Qust. 38. State what Cook said to you, if anything, about the part he had taken in regard to bringing about or effecting the sale.

899 (Objected to because the proper mode of examing the witness is to ask him to state the conversation which he had with Cook, and not to lead him by putting a question which assums that something was said upon the particular subject enquired about, which the question as put does; and further, because the conversation inquired about is not evidence except against the defendent John P. Cook.)

Ans. I have no recolection of his saying anything about it.

Qust. 39. Had you one or more conversations with the defendant John P. Cook in regard to said sale?

Ans. I had several conversations with him.

Qust. 40. State as near as you can the time of the first conversation with him.

Ans. I think it was during the month of August or September in the year 1859; it might have been the last of July in that year.

Qut. 41. State what Cook said in that conversation in regard
900 to the said sale of Rose Bank farm.

(Objected to as not evidence against anybody but the defendant J. P. Cook.)

Ans. I do not remember his exact language.

Qust. 42. Give the conversation in substance between you and him.

(Objected to for the same reason as the last interrogatory.)

Ans. Mr. Cook claimed to be the attorney of Mr. Le Claire, and refused to make any settlement of the matters between May & Le Claire without May's relieving Rose Bank farm, and complying strictly with the terms of the agreement.

Qut. 43. State whether in that conversation Cook said anything in regard to the sale under the deed, or as to who was the purchasers, or as to who then held the title to Rose Bank; and, if he did, state what.

(Objected to for the same reason as to quest. 41, and also as leading.)

901 Ans. I think in the first conversation that he said that Louis C. Dessaint was the purchaser, and that he (Dessaint) still held the title.

Qust. 44. Did you ever learn from Cook as to whether or not he attended the sale under the deed of trust by Powers?

(Objected to for the same reasons as last interogatory.)

Ans. I don't think I did.

Qust. 45. State whether Cook ever informed you who drew the deed executed by the trustee under the sale; and, if so, who?

Ans. I do not know that he ever informed me.

Qust. 46. In your answer to int. 42 you state that Cook claimed to be attorney for Le Claire. In regard to what did he claim to be the attorney for Le Claire?

(Objected to because such statements of Cook are not evidence that he was Le Claire's att'y, nor evidence against anybody but said

902 Cook, and also because the witness should be asked what Cook said, and not what he claimed.)

Ans. In the controversy with James May about the memorandum or agreement that was made between them, and the sale of Rose Bank farm.

Qust. 47. Did you have a conversation with Mr. Cook some time about the 25th of September, 1859, about the matter?

Ans. I did.

Qust. 48. State what he said in that conversation; give his words, if you can; if not, give the substance of the conversation.

(Objected to because said conversation is not evidence, except against said Cook.)

Ans. I cannot give his words. He told me, in substance, that what they wanted was a literal compliance with the contract with Mr. Le Claire from James May, and that Mr. Le Claire was ready to perform his part of the contract. At that time the title to Rose Bank was

903 in Ebenezer Cook. I asked him if he ment by a literal compliance with the contract that Mr. May should purchase the property of Mr. Ebenezer Cook at his price, and thus remove the incumbrance. He said he did not speak for Ebenezer Cook, but he did for Mr. Le Claire, and as his att'y, and that I would have to see Mr. Ebenezer Cook. He said Mr. Powers and myself had been to see him several times, and he hoped that would settle the matter.

Qut. 49. Is there any relationship between Ebenezer Cook and John P. Cook? If so, how are they related?

Ans. They are brothers.

Qust. 50. State whether at the time of this conversation, and before, they were connected in business; and, if so, how?

Ans. They were both members of the firm of Cook & Sargent, engaged in the banking business.

Qust. 51. Where was the house located in which they did their
904 business and kept their papers during the years 1859 and prior to September 25th?

Ans. In the city of Davenport, southwest corner of Second and Main streets.

Qust. 52. State whether during the years 1859 either Ebenezer Cook or John P. Cook had any other office or place of business in the city of Davenport.

(Objected to as immaterial.)

Ans. None that I know of.

Qust. 53. State whether one, or both, or either of them, prior to the 25th of September, 1859, gave their personal attention to the business at this house on the corner of 2nd & Main streets.

(Objected to as immaterial.)

Ans. I think both of them did.

Qust. 54. State how you came to call on Mr. Cook, or have conversations with him in regard to matters about Rose Bank farm, as stated by you.

(Objected to as immaterial.)

905 Ans. I suppose there were several reasons. Mess's Cook & Sargent were the custodians of the papers, &c., that were to be delivered over on the performance of the contract between May & Le Claire. I had a general knowledge of Mr. Cook's connection with the transaction, derived from conversation with Mr. May & others, and I had been refered to him by Mr. Putnam.

Qust. 55. State whether in these conversations and interviews with Cook you were acting as the friend, agent, or attorney of any one; and, if so, whom?

Ans. I was acting as the attorney of James May.

Qus. 56. State whether or not, about the [the] time of the sale of Rose Bank farm by Powers, under the deed of trust, you had any conversation with Powers in respect to the sale of Rose Bank farm and the matters connected therewith; and if you did have such conversation, state what was said, and when & where the same occured.

906 (Objected to because the said conversations with Powers are not competent evidence in the cause for any purpose whatever, being mere hearsay.)

Ans. I had several conversations with Charles Powers; the first interview I had with Mr. Powers concerning the matter was on the 23d day of July, 1859, at the banking office of Tallman, Powers & McLean, in Davenport; he told me there was an understanding between him and John P. Cook, in regard to the sale of the property before the sale; that he went to the court-house with Mr. Cook at the time the property was sold. The understanding was that, no matter what the property was bid off at, Cook was to pay him the full amount of their claim, which was $7,440 00; that in these negociations with Cook he understood that Cook was acting as the attorney of Louis C. Dessaint; he said that the terms of the sale, as announced at the time, were cash, to be paid before five o'clock of that day; that the property was bid off for
907 $5,000 00; that he kept out of the way that evening; that the trustee's deed to the purchaser under the sale was made out in blank on the day of the sale; and that it was delivered to John P. Cook on the day following, about one o'clock; that about the time Dessaint paid him $3,500 00 in bills, and John P. Cook gave him a check of Cook & Sargent, drawn on themselves, for $3,940, dated July 21st, 1859, and that John P. Cook & Dessaint brought a note of Dessaint's after the deed

was delivered, which was endorsed by Geo. L. Davenport, A. Le Claire, G. C. R. Mitchell, and Cook & Sargent, payable on the first of November, 1859, with which they wanted to take up the prior mortgage on the Rose Bank farm. He said he should not have closed the matter with Dessaint and John P. Cook, but was satisfied that Gallagher, a friend of May's, who was there on the day of sale trying to effect a settlement of the matter for May, would not pay him the amount of money that was due him.

908 Qust. 57. You state in your last answer that you had several conversations with Powers in relation to the sale of Rose Bank, and matters connected therewith; state whether in any of those convertions Powers made any statements in addition to those detailed by you in the first conversation; and, if yea, state what further he said in those conversations, or any of them.

(Objected for the same reasons as to the last proceeding interogotary.)

Ans. Nothing that I recollect of.

Qus. 58. You state in your answer to qut. 56, that Powers told you that he went to the court-house with Cook at the time the property was sold; did he say anything in that conversation as to the point from which he and Cook started to go to the court-house, or what kind of a conveyance they went with? and, if yea, state what it was.

(Objected to for the same reasons as to the 56 qus., and also as leading.)

Ans. I do not remember what he said about the kind of con-
909 veyance they went in or where they started from.

Qut. 59. You state in answer to qut. 56 that Powers said that, no matter what the property was bid off at, Cook was to pay him the full amount of their claim, which was $7,440; was the claim which Powers refered to as their claim mentioned or specified at that time? and, if so, state what it was.

(Objected to for the same reasons as to the 56 qut.)

Ans. I think he mentioned it was money he or they had loaned as the agent of other parties, and subsequent to the loan assumed.

Qut. 60. State whether in this conversation Powers mentioned any particular secureties that Cook was to pay under the arrangment between him & Cook; and, if he did, state what they were, and by whom they were executed.

(Objected to for the same reason as to the 56 qut.)

Ans. I don't remember of his saying anything at that time
910 about any other securities except the deed of trust under which the property was sold, executed by James May.

Qut. 61. State whether or not, after this conversation with Powers, you had any conversation with Jno. P. Cook in relation to the payment of the money for which the premises were sold; and, if you did, state that conversation.

Ans. Not that I remember of.

Qut. 62. State whether at any time after the sale of Rose Bank farm by Powers, you had any conversation with the defendent Geo. L. Davenport, or recived any communication from him in regard to a sale or conveyance by him of the same property; and if you had such conversation, state it, or if you received any such communication from him, produce it, if you please.

(Objected to as immaterial, & also incompetent in evidence except as against the def't Geo. L. Davenport.)

Ans. I asked him once or twice on what terms he would sell the

911 property, or release his claim upon it; I think he offered to sell the property or to release his claim to it for $12,000 00, and at my request he made a proposition to that effect in writing; I have not the original of said written proposition in my possession.

(So much of said answer as relates to a written proposition objected to, because the writing itself would be the best evidence, & should be produced.)

Qut. 63. State whether in this conversation with Davenport, he was informed of the object of your conversation, and for whom you desired to procure or obtain the farm.

(Objected to by def't for the same reasons as the last preceeding interogatory, & also because the question is leading and objectionable in form; the witness ought to be asked simply what he said to Davenport.)

Ans. I think he was.

Qus. 64. What did you say to him in reference to it?

912 (Objected to for the same reason as to interogotorry 62.)

Ans. I do not remember my exact language.

Ques. 65. Give the substance of the conversation between you and him in reference to it.

(Objected to for the same reason as to the 62nd interrogatory.)

Ans. I informed him that my object in getting the proposition, was to enable Capt. May to raise the money through some of his friends to purchase the property, and thus effect a settlement with Mr. Le Claire.

Qut. 66. State the time of this conversation, as near as you can.

Ans. About the 1st of April, 1860.

Qut. 67. What has become of the communication received from the defendant Davenport, containing his written proposition refered to in your answer to qut. 62.

Ans. I think I handed it to the commissioner at the time my

913 deposition was taken before in this case, for the purpose of being attached to the same.

Qut. 68. Have you a copy of that communication?

Ans. I have.

Qut. 69. Please produce it.

(Objected to for the same reasons as to qut. 62nd, and also because said copy is not the best evidence.)

The said witness here produced a paper as a copy of said communication, which is hereto attached, marked Exhibit "B."

The further taking of these depositions is here adjourned to January 14th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

JANUARY 14TH, 1864—9 *a. m.*

The examination of the said witness, Geo. H. Parker, resumed:

Qut. 70. In your answer to interogatory 67, you state the communication received from the def't Davenport was handed by you to the

914 commissioner at the time your deposition was taken before in this case; state about when that deposition was taken, and who was the commissioners taking the same.

Ans. Some time in September or October last, before the commissioner who is taking this deposition.

Qust. 71. State whether the suit commenced by the def't Davenport against the complanant May, in the Scott County district court, as stated by you in this deposition, was dismissed or discontinued before or after the death of Charles Powers.

(Objected to as immaterial, and because the record is the best evidence.)

Ans. I think it was after the death of Charles Powers.

Qut. 72. State the circumstances and arrangments between the attorneys of the parties to that suit, under which the cause was dismissed, if any arrangements were made.

(Objected to for the same reasons as to the last interrogotory.)

915 After the complainent dismissed his bill, we dismissed our cross-bill and answer, and had permission, by stipulation, to withdraw the depositions from the files of the court.

Qut. 73. State whether or not the leave to dismiss the bill in that suit was resisted by the defendent therein; and, if so, upon what grounds?

(Objected to for the same reason as the 71st interogatory.)

Ans. It was resisted at first upon the ground that we had made an arrangment with Messrs. Putnam & Leak to have 30 days from the rising of the January term, 1860, of the court, to answer; and was subsequently resisted upon the ground that we had an answer and cross-bill on file, and that they could not dismiss our cause of action.

916 Qust. 74. State whether or not, among other reasons urged against the dismissal of the bill, it was contended that by the dismissal the defendant might loose the benefit of the deposition of Powers that had been taken in the suit.

(Objected to as leading, immaterial, and because the record is the best evidence.)

Ans. It was.

Qust. 75. Look at the paper now shown you and state whether that is the original stipulation between the attorneys in regard to the dismissal of the cause, the withdrawal of the cross-bill, and leave to take depositions from file.

(Objected to as immaterial, and because the record is the best evidence.)

Ans. I have examined said paper, and it is the same as refered to in the question.

Qut. 76. State when that instrument was executed.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I cannot.

917 Qust. 77. State whether it was executed during any term of the Scott distract court; and, if so, what term?

(Objected to for the same reasons as to the 75th interrogatory.)

Ans. I cannot state the term from postive recolection; I think it was done the term it purports to have been—during the February term, 1861.

Qut. 78. Can you state why that stipulation was not filed by the clerk?

(Objected to as immaterial, and as assuming a fact not proved.)

Ans. I cannot.

(The stipulation her produced as evidence, and is annexed by copy marked "C." The said exhibit is objected to by def'ts' solicitor for the same reasons as to interrogatory 75.)

Qust. 79. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties at issue

918 in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

(Objected to as vague, indeffinate, and uncertain.)

Ans. Not that I now recolect.

GEO. H. PARKER.

No. 3.—*Deposition of R. D. Congdon.*

R. D. Congon, esq., produced, sworn, and examined on the part of the complainant, deposes and says as follows:

Qust. 1. What is your name, age, place of residence, and occupation?

Ans. Robert D. Congdon; 40 years, about; Davenport, Iowa; lawyer.

Qut. 2. Are you accuainted with the parties to this suit, or either or any of them; and, if so, how long have you known them?

919 Ans. I am acquainted with plaintiff, and was acquainted with Antoine Le Claire; am acquainted with Louis C. Dessaint, Ebenezer Cook, John P. Cook, Geo. L. Davenport, Marguerette Le Claire; have known them, I think, something over eight years.

Qut. 3. State whether you were acquainted with Charles Powers in his lifetime.

Ans. I was intimately acquainted with him.

Qut. 4. Can you state the time of his death? If yea, state it.

Ans. I think it was between the 3d and 10th of February, 1860.

Qut. 5. Where did Powers reside in the year 1859; and in what business was he then engaged?

Ans. He resided in the city of Davenport, Iowa, and was engaged in the banking and exchange business.

Qut. 6. Did he do business alone, or in connection with others? and if in connection with others, state whom.

920 Ans. He did business in connection with John P. H. Tallman, William McLean, and Edwin R. Pease, under the name and style of Tallman, Powers & McLean.

Qut. 7. State what you know, if anything, in regard to Powers holding a deed of trust, executed by James May, the complainant in this case, upon property disignated and distinguished as "Rose Bank farm."

Ans. I know he was trustee—for whom I do not recolect—in a deed of trust executed by James May upon said property.

Qut. 8. State what you know, if anything, about Powers selling said property under that deed of trust.

Ans. I know he advertised it for sale, or had it advertised; I saw him offer it for sale, or when he offered it for sale at auction at the court-house, and heard him struk it off, I think to Louis C. Dessaint.

921 Qust. 9. State when or about when that sale occured.

Ans. Some time in the summer of 1859; probably in the month of July.

Qust. 10. Do you know who drew the notice of sale of these premises? (Objected to as immaterial.)

Ans. I think I did myself; I drew a notice.

Qut. 11. State whether Powers was in Davenport when the notice was first published, or whether he was absent.

(Objected to as immaterial.)

Ans. I think he was absent.

Qut. 12. State whether the defendants John P. Cook or Ebenezer Cook ever had any conversation with you, or you ever heard a conversation between either of them and Powers in regard to a forecloseure of this deed of trust and a sale of the premises.

Ans. Not to my recolection.

922 Qust. 13. State what knowlede or information you have, if any, as to the part taken by the defendants Cooks, or either of them, in procuring a sale of the said premisses under this deed of trust.

(Objected to as not asking the witness to state facts, but calling for information which is not competent in evidence.)

Ans. I have no knowlede whatever; what information I have was principally obtained from conversations with Charles Powers.

Qut. 14. State what Powers said to you in regard to the part taken by the Cooks, or either of them, in effecting or procuring a sale of said premises.

(Objected to as incompatent in evidence, being mere hearsay.)

Ans. I had a number of conversations with Powers in relation to it; in a number or all of such conversations he stated to me in effect
923 that they were very anxious that the sales should be made.

(Answers objected to because the witness does not state what Powers said to him, but undertakes to give the effect of what he said.)

Qust. 15. Did Powers in either of these conversations state whether or not the Cooks, or either of them, had called on him in regard to the sales; and, if yea, what did Powers say on that subject?

(Objected to because such conversations with Powers are incompetent, being mere hearsay, and because the question is leading.)

Ans. Powers stated to me at different times that John P. Cook had called on him several times in relation to the subject; and I think he also stated that Ebenezer Cook had called on him. Powers was in the habit, about that time more particularly than before, of calling on me at my office and talking about his business affairs; and it being
924 a long time since, it is impossible for me to state any particular conversation.

Qut. 16. Did you ever have a conversation with Powers in which he detailed a conversation had between him and Cook, and in which Cook assigned any reasons for wanting the sale to take place? If so, state when and where that conversation occured, and give the conversation.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I did have such a conversation with Mr. Powers; it was some time previous to his advertising this property for sale; it was at my office. The substance of the conversation was that some time before Capt. May had, by taking undue advantage of Mr. Le Claire, by threatening with law and complaints to the church, and worreying him in various ways, induced him to sign a certain contract with said May, which admitted an indebtedness to May in a large amount; that Le Claire did not sign said contract for the reason that he was in-
925 debted to said May, but because he wished to purchase peace; that his (Le Claire's) friends considered it a great outrage; did not believe that Le Claire was indepted to May, and wished to prevent the consumation of the contract, and that if the title to Rose Bank farm passed from May, it would be impossible for him to perform his part of the contract, and would release Mr. Le Claire, or prevent his being swindled.

Qut. 17. In this or any other conversation with Powers, did he state how many times Cook had applied to him to have the sale take place? If he did, state what he said.

(Objected to for the same reasons as to the 15th qust.)

Ans. I don't recolect that he stated how many conversations he had with Cook on the subject; but have heard him speak of a number of conversations on the subject.

926 Qust. 18. Did Powers at any time detail to you any other conversation between himself and John P. Cook, in which Cook gave any other or further reasons for having the sale go on than those stated by you in answers to question 16? and, if he did, state the conversation.

(Objected to for the same reasons as the 15th qust.)

Ans. I don't recolect of any other.

Qust. 19. Did you have any conversation with Powers before the sale under the trust deed, in which he said anything about having been applied to by the def'ts Ebenezer Cook, to have the sale take place? If so, state the conversation.

(Objected to for the same reason as the 15th qust.)

Ans. I will not be postive.

Qust. 20. Do you recolect that about June, 1859, Mr. Powers left this city for Pittsburgh, or some other place?

(Objected to as immaterial and leading.)

927 Ans. I recolect that Powers left about the latter part of May or in the month of June for Pittsburgh & New York.

Qut. 21. State whether or not, to your knowledge, before Powers left for Pittsburgh, as stated in your last answer, he took any steps or did anything towards having a sale take place under this deed of trust.

(Objected to as immaterial.)

Ans. He did.

Qut. 22. What?

(Objected to as immaterial.)

Ans. I think it was the day before he left he came into my office and handed me the deed of trust, and requested me to write a notice and have the property advertised for sale on a certain day, which he named. I have forgotten the day. Later in the day he came in again, and said he had concluded not to have it advertised at that time; would
928 take the notice and leave it with McLean, his partner; and if he found it necessary to have the notice published, he would advise McLean to that effect, and McLean would attend to it.

Qus. 23. Did you prior to the sale have a conversation with Powers, in which he said anything about an unwillingness on his part to sell this land under the deed of trust, or in regard to the pressure of John P. Cook, or any of the other defendants, to have it done? If so, give the conversation.

(Objected to for the same reasons as to the 15 interogatory.)

Ans. I heard Mr. Powers express his unwillingness to sell, if it could be avoided, in a number of conversations. I have heard him say that there was an anxiety on the part of friends of Mr. Le Claire that the property should be sold. I can't give any particular conversation in detail.

Qut. 24. In these conversations state whether Powers named any of the friends of Mr. Le Claire who expressed this anxiety, as stated
929 in your last answer; and, so, who did he name?

(Objected to for the same reasons as the 15th interrogatory.)

Ans. I have a distinct recolection of his naming John P. Cook and Cook & Sargent, and my impression is that I think I have heard him mention the names of Judge Michell & Geo. L. Davenport.

Qut. 25. State who, now and since the death of Powers, has had the custody of the books and papers & letters of Tallman, Powers & McLean, if you know.

Ans. I have.

Qut. 26. Look upon the letter now shown you, and state whether or not that was found among the papers of Tallman, Powers & McLean which passed into your custody.

Ans. It was.

Qust. 27. State whether it was or was not enclosed in an en-
930 velope when found.

Ans. It was.

Qust. 28. State whether you have the envelope or not.

Ans. I have.

Qust. 29. To whom is the letter addressed, as appears by the envelope?

(Objected to because the paper itself is the best evidence.)

Ans. To Wm. McLean, esq.—Tallman, Powers & McLean, Davenport, Iowa.

Qust. 30. Where does it purport to have been mailed, and when?

(Objected to for the same reason as the last preceeding interrogatory.)

Ans. The impression of the stamp is defective, so that I cannot tell.

Qust. 31. State, if you know, in whose handwriting the superscription on that envelope is.

931 Ans. I believe it to be in the handwriting of Charles Powers. I have no doubt of it.

Qut. 32. Are you acquainted with his handwriting?

Ans. I am.

Qut. 33. In whose handwriting is the letter which was found in that envelope?

Ans. I believe it to be in the handwriting of Charles Powers.

(The said letters is here produced, offered in evidence, and is attached by copy marked Exhibet "D."

The said exhibet is objected to by def'ts as incompetent for any purpose in the cause, being the mere declaration of Powers, and because made without the knowledge of any of these defendants, so far as appears.

In connection with the letter complainant also offers in evidence the original envelope in which the said letter was found, and which

932 is annexed, marked Exhibet "E."

Objected to for the same reasons as Exhibet "D.")

Qust. 34. You have stated that this letter was found enclosed in this envelope, among the papers of Tallman, Powers & McLean in your custody. State who found it.

Ans. I think it was found by James A. May.

Qust. 35. In what place?

Ans. In a box in my office.

Qust. 36. State whether or not you was present when it was found.

Ans. I was.

Qust. 37. State who has had the custody of this letter and the envelope until this time.

Ans. I have.

933 Qust. 38. State whether or not you had any conversation with Powers on or about the day of the sale under the deed of trust, in regard to any arrangment that he had made with any person or persons to purchase these premises; and if you did have such conversation, state what it was and where it occured.

(Objected to because such conversation with Powers are not competent evidence in this cause, being mere hearsay.)

Ans. I had such conversations with him on that day at my office, and other conversations with him that day in relation to the sale. The whole of the conversation first mentioned was in substance as follows: "I will not want you to go up to the court-house and bid for me, for the reason that I have made an arrangment by which I am to receive the full amount due, and the sale at the court-house will be a mere formal act."

Qut. 39. State, if you recolect, whether in this conversation Pow-

934 ers did or did not state with whom he had made such an arrangment.

(Objected to for the same reasons as the last interrogatory.)

Ans. I don't think that he named the party, with whom he had made the arrangment, at that time.

Qust. 40. Do you know why Powers came to you and suggested that you need not attend the sale, as stated by you in your answer to interogatory 38? If you do, explain the reason.

(Objected to as immetarial, the answer to qut. 38 being itself incompetent as testimoney.)

Ans. For the reason that a short time before he had been in my office and requested me to attend the sale and bid the property up to the amount of the claim for him.

(Answer objected to as stating conversation between Powers and the witness, which are not competent in evidence.)

935 Qut. 41. About what time in the day was this conversation between you and Powers, in which he stated to you that you need not attend the sale, as stated by you in your answers to interrogatory 38?

(Objected to because the conversation itself is not competent in evidence.)

Ans. It was between one and three o'clock in the afternoon; I should think about 2 o'clock.

Qust. 42. How long before that time was the other conversation refered to by you, in which he told you he wanted you to be present and bid?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I should think not more than a half hour.

Qus. 43. State whether or not you attended the sale of the property known as Rose Bank farm on that day.

Ans. A short time after the last conversation refered to with

936 Powers, Wm. McLean came into my office, and told me that Powers wished me to go up to the court-house immediately, for the necessity might arrise for his having a bidder at the sale, and I went up and attended the sale.

(So much of the answer as relates to conversation between the witness and one McLean objected to by def'ts' solicitors as immaterial, hearsay, and not responsive to the question.)

Qust. 44. Where did the sale take place?

Ans. In the hall of the court-house in the city of Davenport.

Qust. 45. Who acted as auctioneer at the sale?

Ans. Charles Powers.

Qust. 46. Did he state under what authority he claimed to sell? and, if so, state what he said.

Ans. He said in substance that the sale was made by virtue of the deed of trust to him, as trustee, by James May.

Qust. 47. State whether or not he declared the terms of sale

937 before he offered the property.

Ans. He did.

Qut. 48. State what were the terms he diclared.

Ans. The terms were for cash, to be paid within a certain time, which I don't recolect; and, if the money was not paid within that time, he claimed the privelage of considering that bid void, and conveying the property to the next highest bidder; that is all to the best of my recolection.

Int. 49. State whether at that time anything was said by him about

its being sold subject to a prior mortgage; and, if anything was said, state what it was.

(Objected to as leading.)

Ans. I think something was said. Don't recolect what.

Qust. 50. State whether this land was offered & sold by the trustee in a body or in parcels.

Ans. It was offered both in parcels and in a body. It was sold in a body.

938 Qust. 51. State in what way it was offered in parcels.

Ans. I think that Powers first offered any portion of it that any person present wished to bid on or would bid on, and requested any person wishing to bid on any portion to name it, and it would be offered in that way. Whether he offered any particular part of it, mentioning meets and bounds, or in any way describing a portion of it, I do not recolect; there was no person present that appeared desirous of purchasing a portion of it.

Qut. 52. State whether any part of this land was put up by Powers and bid upon by any of the bidders or not; or whether, when Powers commenced the sale, he stated that he would sell the whole tract?

(Objected to as immaterial.)

Ans. After Powers called the attention of those present to the fact that he was now going to sell certain property by virtue of a deed of trust executed by James May to him, as trustee, he read the deed of trust, I think, the note, and, stating the terms of sale, he said in sub-

939 stance, "I will now proceed to sell this property. If there is any person present who wishes to purchase any portion of the property, name it and give me a bid." I think this was mentioned several times, Powers soliciting bids on any and every portion of the property. Reciving no bids, he then offered it in whole, and sold it. This is a history of it, to the best of my recolection.

The further taking of these depositions is here adjourned till to-morrow, Jan'y 15, at 9 o'clock a.m.

R. LINDERMAN, *Com'r.*

JANUARY 15TH—9 a. m. Examination of the witness Congdon resumed, pursuant to adjournment.

Qut. 53. State about what time of the day the sale opened or commenced.

(Objected to as immaterial and irrellevant.)

Ans. I think it commenced at half past two o'clock p. m., precisely.

Qut. 54. How long before it closed?

940 (Objected to as immaterial & irrelevant.)

Ans. I think it closed at 59½ minuetes past two o'clock p. m. I am thus particular in my recolection for the reason that, at the time of the sale, my attention was called to the fact that Charles Powers had set his watch before coming up here, or had seen that it was right, and that he held his watch in his hand at the time the sale commenced and until it closed, watching it very closely.

(The last part of the answer, commencing with the words, "I am thus particular," was given by the witness himself by way of explanation, as he states.

So much of the answer as states that the witnesses' attention was called to the fact that Powers had set his watch before coming up, or had seen that it was right, objected to as hearsay.)

Qut. 55. About how many persons in all, besides the trustee, were present at the sale, as near as you can state?

941 Ans. I should think there were from seven to ten, perhaps.

Qut. 56. How many of these were defendants in this suit, if any?

Ans. Probably four, if I recolect who the defendants are; there were two, certain.

Qut 57. Name the defendants that were at the sale.

Ans. I am certain that Louis C. Dessaint and one of the Cooks were present, and think both of the Cooks were at the sale.

Qut. 58. Give the names of all the other persons that you now recolect were at the sale?

Ans. G. C. R. Mitchell, I think Jos. A. Le Claire, and parties belonging to the court-house, (doing business there,) who particularly I do not recolect.

Qut. 59. State whether there were any other persons than those
942 you have named, except those belonging to the court-house, present. If there were others, give their names.

Ans. None to my recolection.

Qut. 60. State whether J. A. Le Claire sustained any relationship to the defendant Antoine Le Claire; and, if so, what?

Ans. He is the reputed nephew.

Qut. 61. State what business relation, if any, Jos. A. Le Claire sustained to Antoine Le Claire at and prior to that time.

(Objected to as immaterial.)

Ans. He was business agent, clerk, or collector, or all of these, for Antoine Le Claire.

Qut. 62. State what you know, if anything, in relation to G. C. R. Mitchell's having been the confidential friend, advisor, and councelor of Antoine Le Claire at and prior to that sale.

(Objected to as immaterial & leading.)

Ans. I had understood that Judge Mitchell was an old and intimate friend of Mr. Le Claire's, and had acted as his attorney for many
943 years, and up to the time of his discontinuing the practice of law.

(Answer objected to as hearsay.)

For the purpose of accomodating Capt. A. H. Davenport, who is present from Le Claire to be examined, the further examination of the witness R. D. Congdon is suspended untill after the examination of said A. H. Davenport.

No. 4.—*Second dep. of A. H. Davenport—direct int. No. 1 to No. 94.*

A. H. Davenport produced and sworn on the part of the complainant:

Qut. 1. What is your name, age, place of residence, and occupation?

(Defendants' solictor objects to the examination of the said witness because his deposition has already been taken in this cause by the complainant, and no leave of court to retake the same has been granted.)

Ans. My name is Adrian H. Davenport; my age, 51; residence, Le Claire, Scott County; am engaged now in selling goods.

944 Qust. 2. How long have you resided in Scott County?

Ans. About 30 years.

Qut. 3. Are you acquainted with the parties to this suit, or either or any of them? If yea, state with which of the parties, and how long you have known them.

Ans. I know them all, I presume; Mr. & Mrs. Le Claire I have known ever since I came to the State, some 30 year; Capt. May some 12 or 15 years, I think; have known Messrs. Cooks some 25 years; have known

Geo. L. Davenport some 30 years; Sargent have known some 25 years; I have known Dessaint some 4 or 5 years.

Qust. 4. Where did Antoine Le Claire reside after you first became acquainted with him until the time of his death?

Ans. In Davenport and vacinity.

Qut. 5. State what you know, if anything, in relation to any
945 business connections between the complainant May and Antoine Le Claire prior to the year 1859.

(Objected to as immaterial.)

Ans. I know of their being connected in laying out the towns of Davenport and Le Claire as proprietors.

Qust. 6. About how long did such business connection continue between them?

(Objected to as immaterial.)

Ans. I cannot answer as to any definite time; it was for a number of years.

Qut. 7. State whether or not in the year 1857 you purchased of Antoine Le Claire any real estate; and, if so, state about the time and what real estate.

(Objected to because the matters enquired of are susseptable of documentory proof.

Ans. I think about May, 1857, I purchased of Mr. Le Claire a portion of his reserve at the heads of the rapids, known as the Le
946 Claire reserve.

Qus. 8. State whether or not any conveyance was executed to you on the purchase; and, if so, what kind of a conveyance?

(Objected to for the same reason as the last interrogatory.)

Ans. He did execute to me a warrentee deed of the property.

Qust. 9. State whether on the purchase of this property it was paid for in whole or in part; whether any securities were given for the payment of the purchase-money, or any part thereof; and if securities were given, state what.

(Objected to for the same reasons the 7th qut.)

Ans. It was not paid for except by my notes; a mortgage was given on the same property as security.

Qut. 10. How many notes?

(Objected to for the same reason as to 7th qust.)

Ans. 5. Five.

Qust. 11. Look upon the instruments now shown you, and
947 state whether they are or are not the notes executed by you as stated on that purchase.

Ans. They are the same notes.

(The notes refered to by the witness in the above answer are here produced and offered in evidence, and are attached by copies marked Exhibit "F," "G," "H," "I," & "J."

Said exhibets are objected to by def'ts' solicitor as immaterial and uselessly incumbering the records.)

Qust. 12. Look upon the paper now shown you, and state whether or not it is the original mortgage executed, as stated by you, on said purchase.

Ans. It is the original mortgage.

(The said mortgage is here produced and offered in evidence, and is annexed by copy marked Exhibit "K."

Objected to for the same reasons as to F, G, H, I, & J.)

Qust. 13. State whether or not any other security was given to Mr. Le Claire on the purchase of this land or subsequently; and, if yea, state what.

948 Ans. I did give to Mr. Le Claire, at a subsequent time, notes on various parties to the amount of $16,000 00, or thereabouts, as collatterals.

Qust. 14. State what was to be done with these collatterals by Le Claire under your arrangment with him.

(Objected to as immaterial, because said arrangment, if in writing, must be prooved by producing the writing; and, if verbal, by prooving the conversation or conversations at which it was made.)

Ans. When paid, they were to be applied in liquidation of his claim against me, and credited on those notes.

Qust. 15. State about the time these collatterals were delivered to him as near as you can.

Ans. I cannot recolect; my memory is not good about dates.

Qust. 16. State about how long it was after the mortgage was executed.

Ans. About two years, as near as I can recolect.

949 Qust. 17. State whether at any time before the death of Le Claire you had any conversation with him in which he stated to you that he had transfered the five notes and the collatterals delivered to him by you to any person; and, if yea, state about when that conversation occured and what was said.

(Objected to as leading & immaterial.)

Ans. Mr. Le Claire did tell me, after he had made an arrangment with Capt. May, that he had made an agreement with May, by which, if the contract was consumated, Capt. May would become the owner of my notes & my entire indebtedness to Mr. Le Claire.

(Answer objected to, as consisting of oral evidence of the terms of a contract which is in writing.)

Qust. 18. Did Mr. Le Claire in this conversation tell you where the notes, executed by you to him, and the mortgage & the collateral then where? If he did, state what he said.

Ans. He said they were not to be removed from where they
950 then were, in the hands of Mr. [Mr.] Cook, until after the fulfillment of the contract by Capt. May.

Qut. 19. State about how much, if anything, you had paid him on your five notes up to the time that he informed you that he had made this arrangment with Capt. May.

Ans. Three hundred and fifty dollars.

Qut. 20. State whether or not at any time subsequent to the agreement between Capt. May & Mr. Le Claire, you called on Mr. Le Claire for the purpose of making him a payment on the notes; and, if so, state the conversation that occured at that time between you and Mr. Le Claire.

Ans. I did, subsequent to that time, call on Mr. Le Claire and told him I had some money to pay on the notes, and Mr. Le Claire again told me of the contract between himself and Capt. May, and told me that if Capt. May fulfilled his contract the money would be his,
951 and he did not care about recieving it, and refered me to Mr. John P. Cook.

Qut. 21. State what reason he gave, if any, for refering you to Mr. Cook.

Ans. He said Mr. Cook was his lawyer, and also the custodian of the papers.

Qut. 22. State whether in that conversation anything was said by Le Claire about the payment or the collection of these collaterals which you had transfered to him.

Ans. I have no recolection that there was, except that he remarked (as I before stated) that he did not want to recieve any money.

Qut. 23. Did he state to you whether he did or did not desire you to collect any money on these collatterals, or to procure the payment of the same.

(Objected to as leading & immaterial)

Ans. I don't think he did either to collect or not collect.

952 Qust. 24. State whether or not, after you were refered to John P. Cook by Le Claire, as stated by you, you called upon Mr. Cook and had an interview with him.

Ans. I did, sir.

Qut. 25. State what was said and occured between you and Mr. Cook on that occasion.

Ans. I informed Mr. Cook of the conversation between Le Claire and myself; Mr. Cook said he was not disposed to receive the money; that he did not feel himself authorized to receive it, if Mr. Le Claire did not desire to take it; that I could make a legal tender of it, if I was disposed; but I did not do it.

Qut. 26. State whether or not anything was said by Cook, at this interview, in regard to a tender or offer in writing to pay the money; and, if so, what did he say on that subject?

(Objected to as immaterial and not competent in evidence in this cause.)

953 Ans. He said I could make a written tender to himself or Le Claire, if I wished to do so, or if it would be of any benefit to me; but I did not do it.

Qut. 27. State whether or not at the time of this interview with Antoine Le Claire and John P. Cook, mentioned by you, you had any money to pay on these notes; and, if so, what amount?

(Objected to as immaterial.)

Ans. At no time except the two interviews mentioned between myself & Le Claire & Cook, on the same day, had I any money. I had at that time from 400 to 500 to pay on the notes.

Qut. 28. State whether or not at this interview with Cook any offer was made to pay any money by you; and, if yea, state the amount as near as you can, and whether or not Cook recieved the same; and if he did not recieve it, state what objections, if any, he made to receiving it.

(Objected to as leading and immaterial.)

954 Ans. I told him the conversation I had with Mr. Le Claire, and that I had some money to pay; he said that as Mr. Le Claire had just refused to receive it, he did not feel authorized to do so, and I could make a written tender, if I felt disposed to do so, if I thought it would benefit me any, as I stated before. I cannot state the exact amount; think it was from $400 to $600. It might have been $800; cannot say postively.

Qust. 29. State whether or not at any time after the execution of these five notes spoken of by you, any agreement was ever made between yourself and the holders of the notes, in regard to an extention of the time of payment; and, if yea, state about the time that agreement was made.

(Objected to as immaterial.)

Ans. I think about the time the first note became due there was such an agreement; at least Mr. Le Claire told me he would not press me, and did not press me. There was no written agreement to that

955 effect, unless he may have endorsed it upon the back of the notes.

Qust. 30. State the agreement or the conversation between yourself & Le Claire in respect to the extention of the time, as near as you are able.

(Objected to as immaterial.)

Ans. I can't state the particulars, except this: I had not the means to pay, and could not make it from sales of the property, as I had expected, or from other property, and when I would see the old gentleman, I would ask him for further time, which he always told me he would give; that he would not press the matter, or sue on it.

Qut. 31. In either of these conversations, what was said, if anything, about the payment of the interest on the notes?

(Objected to as immaterial.)

Ans. He always told me he would like to have the interest, if he could not get any more; but still he did not press me for that.

956 Qut. 32. Was any time fixed for the payment of the interest? and, if so, state it.

(Objected to as immaterial.)

Ans. Not unless the notes specified that it was to be paid annually, & that I don't recolect.

Qut. 33. State whether or not the delivery of these collatterals spoken of by you to Antoine Le Claire was made in pursuance of a verbal or written agreement between you & Le Claire.

(Objected to as immaterial.)

Ans. I have the written agreement or reciept of Mr. Le Claire, specifying the notes, &c., and how to be applied.

Qut. 34. Can you now produce that agreement or reciept?

Ans. I think I have it with my papers at home; I have not got it here with me.

957 Qut. 35. State as near as you can the time of this conversation with John P. Cook by you; give the year and the month, if you can.

Ans. My memory is not very good as to dates, but I think it was in the fall after the agreement between Capt. May and Mr. Le Claire.

Qust. 36. State whether these notes and mortgage were subsequently payed by you, or whether any arraugment was made between you and Le Claire in regard to them.

(Objected to as immaterial, and because the witness has testified fully upon that subject in his former deposition taken in this cause.)

Ans. They were never paid by me. We had a conversation about the matter. I told him I could not pay it, and he might as well close the matter up first as last, and foreclose the mortgage.

Qut. 37. State whether or not a written agreement was entered into between you and Mr. Le Claire in regard to forecloseing this mortgage.

958 (Objected to as immaterial.)

Ans. There was.

Qut. 38. State, if you can, where that written agreement is.

Ans. I have it with my papers at home.

Qut. 39. State who drew that agreement.

(Objected to as immaterial.)

Ans. It was drawen, I think, by a young man in Cook & Lindley's office.

Qut. 40. State whether John P. Cook was one of the firm of Cook & Lindley.

Ans. He was.

Qut. 41. State whether or not John P. Cook was present or absent at the time this agreement was drawn and executed.

(Objected to as leading & immaterial.)

Ans. He was present.

959 Qut. 42. State whether any direction was given to the clerk who drew this agreement; and, if so, by whom?

(Objected to as immaterial.)

Ans. Mr. Cook drew a sketch of the agreement in pencil, I think, and handed it to the young man to copy. Mr. Cook was the lawyer in the case, Mr. Le Claire's lawyer.

Qut. 43. About how long after the making of this agreement before the forecloseure of this mortgage was commenced?

(Objected to as immaterial, and because the record is the best evidence.)

Ans. I cannot say; but not a very great length of time.

Qust. 44. In what court was the foreclosure commenced?

(Objected to as immaterial, and because the record is the best evidence.)

Ans. In the district court of Scott County.

Qut. 45. State whether the written agreement to foreclose
960 the mortgage between you and Mr. Le Claire, spoken of by you, and the conditions thereof on your part, have been performed, or whether the same still remain unexecuted and unperformed.

(Objected to as immaterial, leading, and involving matter of law as well as of fact.)

Ans. So far as I am concerned, they are performed, I think.

Qut. 46. State whether or not any decree was rendered on that foreclosure.

(Objected to because the record is the best evidence.)

Ans. There was, sir, and the property sold.

Qut. 47. Sold in what way, on execution or otherwise?

(Objected to because the record is the best evidence.)

Ans. On execution, so I understand; the sheriff so informed me.

(Ans. objected to as hearsay.)

Qt. 48. About what time was the sale?

961 (Objected because the record is the best evidence.)

Ans. My memory does not serve me as to the time of the sale.

Qust. 49. State whether you learned, at any time, that a sale had been made of the premises.

(Objected to because the record is the best evidence, and as calling for hearsay.)

Ans. I did, sir.

Qust. 50. Who had had possession of the premisses mentioned in the mortgage from you to Le Claire, up to that time; the time you learned of the sale?

(Objected to as immaterial.)

Ans. I had, sir.

Qust. 51. Was there any change of possession after that; and, if so, who took possession?

(Objected to as immaterial, and also as leading.)

962 I have had possession since that time as agent.

Qust. 52. As agent for whom?

Ans. For Joseph Le Claire for a short time. After that, for Mr. Antoine Le Claire, while he lived; and since his death for the administrators of Mr. Le Claire.

Qust. 53. How long were you agent for Joseph Le Claire?

(Objected to as immaterial.)

Ans. I met Mr. Joseph Le Claire in Mr. Antoine Le Claire's office, and

spoke to him in regard to the property; he informed me that he was the purchaser; I asked him whether he desired, or whether the owner of the property still desired, me to act as the agent for it, and attend to the property; he said he still desired me to go on and look after it as I had done; my memory does not serve me as to the length of time I acted as agent for Joseph Le Claire, but will state as near as I can; some
963 short time after, a few weeks, perhaps, I called into Mr. Le Claire's office, and had some conversation with Mr. A. Le Claire, & I perhaps acted as the agent of Mr. Jos. Le Claire two, or three, or four weeks.

Qust. 54. After that time, for whom did you act as agent up to the time of Antoine Le Claire's death?

Ans. For Mr. Antoine Le Claire.

Qust. 55. Who employed you as the agent of Mr. Antoine Le Claire?

Ans. He did himself.

Qust. 56. State what he said at the time he employed you to act as his agent.

Ans. He told me he was the owner of the property; that Joe had never owned it; and desired me to go on as I had done, and act for him.

Qut. 56. State what you did, as the agent of Antoine Le Claire, for this property.

964 (Objected to as immaterial.)

Ans. I acted as his general agent; looking after the houses, fences, &c., and seeing that the timber was not cut and distroyed; collected some money for him from parties to whom portions of this land had been sold.

Qut. 58. State as near as you can how much money you collected as rents of this land, during the lifetime of Mr. A. Le Claire, as such agent.

(Objected to as immaterial.)

Ans. I collected very little rents, except in repairs on the property perhaps; no money.

Qust. 59. About what amount did you collect in the shape of repairs?

(Objected to as immaterial.)

Ans. Perhaps in the neighborhood of a hundred dollars; perhaps less.

965 Qut. 60. About what amount did you, as such agent, collect from persons to whom portions of these premises had been sold, as stated by you, prior to the death of Antoine Le Claire?

(Objected to as immaterial.)

Ans. I cannot state any deffinate amount as anything near it.

Qut. 61. State such sum as near as you are able to state postively as having been received by you.

(Objected to as immaterial.)

Ans. I am unable to state any specefic amount.

Qust. 62. State what amounts were paid by such purchasers of the premises to Antoine Le Claire and to you, as his agent, after he employed you as his agent, and prior to his death, as near as you are able.

(Objected to as immaterial, and because it does not appear that the witness has any knowledge personally of what sums were paid
966 to Antoine Le Claire.)

Ans. I could not form any estimate. The business was transacted through Mr. Cook, the notes being still in his hands, but it was some considerable amount.

The further taking of these depositions is here adjourned untill Monday, January 18th, 1864, at 10 o'clock a. m.

R. LINDERMAN, *Com'r.*

The parties met at 10 o'clock of Jan'y 18th, 1864, pursuant to adjournment. And the commissioner being engaged in official business, the further taking of this depositions is adjourned untill 2 p. m. of that day.

R. LINDERMAN, *Com'r.*

JANUARY 18TH—2 *p. m.*

Examination of A. H. Davenport resumed persuant to the above adjournment.

Qut. 63. Can you state whether it was more or less than $10,000? and, if so, state.

967 (Objected to for the same reasons as the last interogatory.)

Ans. I think it was a great deal less than that.

Qut. 64. State whether it was more or less than three thousand, within your knowledge.

(Objected to for the same reasons as the 62 qust.)

Ans. I have no means of knowing definately, as I kept no account of it, but think it was less than $3,000.

Qust. 65. State, so far as your means of knowledge extend, whether it was more or less than $1,500.

(Objected to for the same reasons as the 62 qust., and also because the witness has already stated that he does not know what the amount was.)

Ans. I should think, so far as I recolect, that it was somewhere from $1,000 to $1,500; as I said before, I kept no account of it; and do

968 not recolect definately. Parties would frequently come to me, and want to pay some money. I would come with them down here, and get the notes, make the calculation, and whatever money was paid would be paid then and there to Mr. Cook, and endorsed on the notes. Perhaps at other times a few dollars would be paid to me, and I would bring it down, and take a receipt.

Qut. 66. State to whom these payments were made by the purchasers of portions of the Le Claire reserve after the time Antoine Le Claire employed you as his agent, as stated by you, and up to the time of his death.

(Objected to as immaterial.)

Ans. As I before said, sometimes to me and sometimes to Mr. John P. Cook, sometimes when I was present, and sometimes I would not come down with them.

Qut. 67. After the time you were so selected as agent by Mr. Le Claire, as stated by you, state if you know in whose possession the con-

969 tracts with the purchasers of the Le Claire reserve were deposited, and in what capacity he held them.

(Objected to as immaterial.)

Ans. After I turned them over to Antoine Le Claire, I think they were in the hand of John P. Cook, as custodian, or perhaps as the lawyer of Mr. Le Claire, as he, Le Claire, used frequently to refer me to Mr. Cook.

Qust. 68. State whether or not, after the delivery of the contracts and notes to Cook, as stated by you in your last answer, Cook received all the payments made by purchasers, or whether part were paid to Cook, and part to Le Claire in person.

(Objected to as immaterial.)

Ans. I can't recolect. They may have both been present at some times.

Qust. 69. On those occasions, when Cook & Le Claire were both present, if at all, who attended to the business of computing the interest, receiving the money, and making the credits on the notes?

(Objected to as immaterial.)

970 Ans. Mr. Cook.

Qut. 70. Since the death of Antoine Le Claire, have, to your knowledge, any moneys been paid by purchasers of portion of the Le Claire reserve? and, if yea, state to whom such payments have been made, and the agregate amounts thereof, as near as you can.

(Objected to as immaterial.)

Ans. There has been moneys paid since his death, so I have been informed by parties who paid it and got their deeds, paid to Mr. Geo. L. Davenport, or Jno. L. Coffin, their clerk. The amount I have no knowledge of.

(Answers objected to as hearsay.)

Qut. 71. State whether you were ever present when any payment or payments were made to Davenport or Coffin, as stated in your last answer; and, if you were, state when such payments were made, and the amounts thereof.

(Objected to as immaterial.)

971 Ans. I was present when the amount of one sale by the administrators was paid. Have no recolection of being present when any payments were made on the notes since the death of Le Claire. I don't recolect when the payment for the sale was made. The amount was something near $700—about $660 or $670.

Qust. 72. State whether or not, since the time you were employed as agent for Antoine Le Claire, as stated by you, any arrangments or compromises were made with purchasers in the Le Claire reserve under which either Antoine Le Claire, or his executors, have received any money or a surrender of any property; state fully what you know in regard to it.

(Objected to as immaterial and as of a purely impertenant and fishing character.)

Ans. I think no compromises in Mr. Le Claire's lifetime, but since his death I have assisted the executors to compromise several cases,
972 by which they took back the property and gave up the notes, but I think no money passed when those compromises were made.

Qut. 73. State whether the lands thus surrendered were or were not included in the original mortgage from you to Le Claire, and a part of the original purchase by you of him.

(Objected to for the same reasons as the last preceeding intorogatory.)

Ans. They were, sir.

Qust. 74. State whether or not, since the death of Le Claire, to your knowledge, any rents of the land conveyed by the mortgage or interests in the contracts of sale, or any parts of said land, have been paid to or collected by the executors; and, if yea, state the aggregate amounts of such payments, as near as you are able.

(Objected to for the same reasons as the 72 interrogatory.)

673 Ans. Not to my knowledge; except as stated before, some small amounts were collected by me in money and some in repairs. There were a very few dollars that I have collected in cash. I cannot give the amount.

Qust. 75. State whether any of the collatterals mentioned and refered to by you have, since the time of your written agreement with Mr. Le Claire, in regard to the foreclosure of the mortgage, or any parts or portions thereof, been collected, either by Mr. Le Claire or his executors; and, if yea, state the aggregate amount of such collections, as near as you can.

(Objected to for the same reasons as the 72 qut.; and also because the witness has already been fully examined on the precise subject covered by the interogatory.)

Ans. There have been, but I don't know the amount.

Qut. 76. State what amount has been collected, to your knowledge and recolection.

974 Ans. From $5,000 to $7,000. This includes bonds surrendered by the parties, and notes given up by the executors.

Qut. 77. State whether or not, in the spring or summer of 1859, you had a conversation with Antoine Le Claire in which he stated anything about having made a settlement with James May; and, if you did, state what he said in that conversation.

(Objected to because the so-called settlement is in writing and cannot be varied by parole evidence.)

Ans. I can't say that I did in the spring of 1859, but it was a few days after I came down to Davenport Capt. May showed me the settlement in writing, perhaps three or four days or a week after. I called on Mr. Le Clair upon that subject and had a conversation with him, in which he told me that he had made the contract refered to with Capt. May, as a final settlement of their long-standing matters; proo-

975 vided Capt. May fulfilled his part of the contract; my notes, mortgage, &c., that I had given Mr. Le Claire, and all the collaterals that I had given in the purchase of this reserve matter would become May's.

Qust. 78. What was said, if anything, in regard to the settlement being satisfactory, or otherwise, by Mr. Le Claire?

(Objected to as immaterial and frivelous.)

Ans. We had considerable talk in relation to their old dealings. Amongst other things he mentioned a dissatisfaction in relation to property that had been given to different parties for their influence to locate the county seat at this town, Capt. May having been one of the original proprietors; that Capt. May thought that too much property of his had been given away, but taking the thing alltogather, the old man said that he had finally made this bargain, and that he expected to fulfill it. There were a great many things said that I cannot now repeat.

976 Qust. 79. State whether you at any time had a conversation with the def't, Ebenezer Cook, in regard to the transfer of the property known as Rose Bank farm to him by Louis C. Dessaint; and, if yea, state that conversation.

(Objected on behalf of all the def'ts except E. Cook, as not evidence against them.)

Ans. I came down to Davenport a few days after the sale of Rose Bank farm took place, and in conversation with Mr. Cook in his banking office, I enquired who purchased the farm refered to; he told me that Mr. Dessaint had purchased the farm at the sale, but that Dessaint had got scared about his purchase, hearing Capt. May blowing about it, and expressed himself that he wished he had had little to do with, as he might get himself into litegation; that he (Mr. Cook) told him that it was, as he thought, a good bargain, and that he would take it off of his hands, and done so.

977 Qut. 80. Was there anything said in that conversation by Mr. Cook as to how he paid for it? If so, state what he said.

(Objected to for the same reasons as to the last preceeding interogatory.)

Ans. He said he gave him his check for the amount. I don't recolect what amount it was.

Qust. 81. What was the value of the Le Claire reserve, or that part thereof covered by the mortgage from you to Le Claire, in March, 1859?

(Objected to as immaterial.)

Ans. I don't know how to answer that question. I thought in 1857 it was worth $35,000 00, but in 1859 it had depreciated a great deal. Perhaps it might have been worth $20,000 00.

Qut. 82. Did you at any time have a conversation with Antoine Le Claire in regard to Rose Bank farm, or in regard to the possession
978 of the same by Jos. A. Le Claire or by himself, either before or after the sale thereof; and, if yea, give the conversation?

Ans. I don't recolect that I did; I cannot particularize any conversation about the possession of the farm either by himself or Joe. I had so many conversations with him about that time, that I cannot recolect any one about the possession of the farm.

Qust. 83. Did you ever have any conversation with Antoine Le Claire, or hear any conversation between him and any other person touching the sale of Rose Bank under the deed of trust by Charles Powers; and, if yea, state what he said in such conversation.

Ans. I do not think I ever had, or heared any such conversation; I don't think I ever heard the old man talk about it at all.

Qut. 84. State whether or not at any time you had a conversation with Le Claire after the sale of Rose Bank farm under the trust
979 deed, in which he said anything in regard to the ownership of the same, or the transfer of the same to Jos. A. Le Claire, or his heirs, or either of them; and, if yea, state what he said.

(Objected to as immaterial.)

Ans. No, sir; I don't think he ever told me.

Qut. 85. State whether or not you ever had any conversation with the d'f't Davenport in regard to the conveyence of Rose Bank to Jos. A. Le Claire, or his heirs, or either of them; and, if so, state what he said.

Ans. I never did, sir.

Qut. 86. You state in answer to interogatory 37, that a written agreement was entred into between you and Antoine Le Claire in regard to the foreclosure of the mortgage from you to Le Claire; have you that instrument or agreement with you? If so, please produce it.

(Objected to as immaterial.)

980 Ans. I have it with me; and now produce it.

(The said instrument is here offered in evidence, and is hereto annexed by copy marked Exhibet "L."

The said exhibet is objected to as immaterial, and because the execution of it has not been properly proven.)

Qut. 87. State whether or not Mr. Le Claire executed that instrument.

(Objected to as immaterial, and because the said instrument has a subscribing witness.)

Ans. He did, sir.

Qut 88. In whose presence?

(Objected to for the same reasons as the last interogatory.)

Ans. John P. Cook, the subscribing witness, and myself, as one of the parties.

Qut. 89. Look at the signatures of Le Claire and John P. Cook, subscribing witness to that instrument, and state whether or not said
981 Le Claire and Cook signed the same.

(Objected to for the same reason as the 87 qut.)

Ans. They did, sir.

Qut. 90. State whether or not you was present at the signing and saw it done.

(Objected to for the same reason as the 87 interogatory.)

Ans. I was present and saw it done.

Qust. 91. At what time or on what day did Le Claire and yourself sign that instrument as parties, and the def't John P. Cook sign it as witness; on the day it bears date or before or after that time?

(Objected to for the same reasons as qut. 87.)

Ans. I should think it was some two or three days after the date. It was not drawn on that day, the day it bears date, but was agreed upon, and signed some two or three days afterwards, when I came down again, to the best of my recolection.

982 (The complainant now offers the said instrument in evidence, and the same is annexed by copy marked Exhibet "L.")

Qust. 91. Are you acquainted with the handwriting of John P. Cook and Antoine Le Claire?

Ans. I am, sir.

Qust. 92. Look upon the papers now shown you, being the instruments of which Exhibets F, G, H, I, & J are copies; and state in whose handwriting the body of the endorsements, on the several exhibets, (and which have been erased by ink lines,) are?

(Objected to as immaterial.)

Ans. I should say they were all in the handwriting of John P. Cook.

Qust. 93. In whose handwriting is the signature A. Le Claire directly under each of said endorsments?

983 Ans. I should say it was in the handwritting of Antoine Le Claire.

Qut. 94. Do you know or can you set fourth any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or which may be material to the subject of this your examination, or the matter in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I do not, sir.

The deposition of said witness to be concluded on some day set for taking these depositions, when he can attend, his business requireing him to be absent to-morrow.

The further taking of these depositions is here adjourned until to-morrow, Jan'y 19th, 1864, 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

984 No. 5.—*Examination of R. D. Congdon resumed.*

JANUARY 19TH, 1864—9 *o'clock a. m.*

The taking of these depositions resumed pursuant to adjournment.

The examination of the witness R. D. Congon resumed from interogatory No. 62.

Qust. 63. State to whom the premises were struck off on this sale.

Ans. To Louis C. Dessaint.

Qut. 64. State whether or not any other person or persons bid for the property on the sale.

Ans. Judge Mitchell bid one or more times, and I think one of the Cooks. I don't recolect any others (except Dessaint.)

Qut. 65. How many bidds did Dessaint make for the property?

Ans. I do not recolect.

Qut. 66. Can you state whether or not he made more than the one.

Ans. I cannot.

985 Qut. 67. How long was it after the property was struck off to Dessaint, before the parties present left the court-house?

Ans. Mr. Powers and myself left very soon after. I have no recolection as to the others.

Qut. 68. State whether or not you made any bid on the premises for Powers or otherwise.

Ans. I did not.

Qut. 69. State whether or not any other lands than the farm known as Rose Bank were sold or offered for sale by Powers, at the court-house, on the afternoon of this sale.

Ans. None to my knowledge.

Qut. 70. About what time did you go to the court-house on that occasion?

Ans. I should think about ¼ past 2 o'clock p. m.

Qut. 71. What time did you leave the court-house?

986 Ans. I should think not later than 5 minuets past 3 o'clock p. m.—it was almost immediately after the property was struck off.

Qut. 72. State whether or not, during the time that you remained at the court-house on this occasion, anything was said by Powers about selling any other lands or property by Powers; and, if yea, state what was said.

Ans. Nothing to my recolection.

Qut. 73. Did Powers and yourself go from the court-house separately or togather?

Ans. Togather.

Qut. 74. Are you acquainted with John T. King?

Ans. I am.

Qut. 75. State whether or not Powers and yourself, on leaving the court-house on that occasion, met John T. King; and, if so, where?

(Objected to as immaterial.)

987 Ans. We did, at or near the corner of Ripley & 4th streets.

Qut. 76. Upon the occasion of their meeting, did any conversation occur between Powers and King in regard to the sale of the property just made by Powers? and, if yea, state what that conversation was.

(Objected to because such conversation is not evidence against any of these defendants, they not having been present thereat, and the same is as to them mere hearsay.)

Ans. There did. At the time Mr. King met us, he asked in substance what Powers had done, and I think told him that he had promised him to do nothing in relation to the sale of the property, or not to sell the property until his return to the court-house. Mr. Powers replied, that although the property had been struck off to Mr. Dessaint, it was still in his hands, and if Capt. May paid the money within a certain time (naming it) the sale would amount to nothing; and if

988 Capt. May did not pay the money he would be in a better position than he was before the sale. There was considerable conversation between them, but this is the substance of it, to the best of my recolection.

Qust. 77. If there was anything else said on this occasion in relation to this sale and the matters connected therewith, other than you have stated in your last answer, that you now recolect, please state it.

(Objected to for the same reasons as last preceeding interogatory.)

Ans. I do not pretend, and have not pretended, to state what was said either in the order or language of the parties. And the only thing that I recolect in addition is in explenation of what I have said before, which was, that if Capt. May should not pay him all notes given by Capt. May and secured on Rose Bank farm, he would be released from by the effect of the sale.

989 Qut. 78. State whether or not in this conversation anything was said in regard to the readiness of Capt. May to pay the amount due under this trust deed; and, if anything was said on that subject, state it.

(Objected to for the same reasons as the 76 qut., and also as leading.)

Ans. There was something said about it, but I cannot repeat the conversation.

Qut. 79. Was anything said as to the whereabouts of Capt. May while this sale was going on? and, if yea, state what.

(Objected to for the same reasons as the 78 qut.)

Ans. I don't recolect.

Qut. 80. Was there anything said as to where Powers had left Capt. May while he went to attend the sale? If yea, state it.

(Objected to for the same reasons as the 78 qut.)

Ans. I think it was stated that he was left in Powers' back office, by which said—or the order of the conversation I cannot state—King was considerably excited.

990 Qut. 81. State what was said, if anything, in that conversation in regard to Capt. May's being present at the banking-house of Powers, prepared or ready to pay the deed of trust when Powers left his banking-house to attend the sale.

(Objected to for the same reasons as the 78 interogatory.)

Ans. There was something said on the subject, but I cannot repeat the conversation. As I said before, Mr. King was considerable excited, and talked fast.

Qust. 82. In which direction was King going when you met him on this occasion?

(Objected to as immaterial.)

Ans. West, and towards the court-house.

Qut. 83. State what you know, if anything, in regard to any steps taken, or efforts made, by Capt. May to raise money or means with which to pay this trust deed, under which Powers sold this Rose Bank farm.

(Objected to as immaterial, and as not evidence against these defendants.)

991 Ans. I have no knowledge on the subject.

Qust. 84. Do you know James M. Gallagher, of Pittsburgh, Penn.?

Ans. I have seen the gentleman.

Qut. 85. State whether you saw him at Davenport at any time; and, if so, when?

Ans. I think it was early in the fall of 1863.

Qut. 86. State whether or not you saw him here at or about the time of the sale of Rose Bank by Powers under the trust deed.

Ans. Not to my recolection.

Qust. 87. You state that you think one of the Cooks bid at this sale

of Rose Bank, under this deed of trust by Powers; state if you recolect what sum he bid or offered for the property.

Ans. I do not recolect.

Qut. 88. State how many bids were made at this sale in all;
992 and by whom and the amounts of the bids as near as you can.

Ans. I have a distinct recolection of but two bids being made; the first, by Judge Mitchell, of $4,000, and the last of $5,000 by or for Dessaint. I know there were other bids made, by whom I don't recollect distinctly.

Qust. 89. State whether Powers was or was not personally engaged in attending to the business of the firm of Tallman, Powers and McLean, in the year 1859.

(Objected to as immaterial.)

Ans. He was.

Qust. 90. State what other persons, if any, were engaged and employed in the months of June and July, 1859, in the banking-house of Tallman, Powers & McLean.

(Objected to as immaterial.)

Ans. William McLean and Mr. Cuntz, the book-keeper.

Qust. 91. How many appartments were there in their place of business, that were occupied for business purposes?

993 (Objected to as immaterial.)

Ans. Three. The banking-room, back office, and vault.

Qut. 92. Look upon the paper now shown you, and state in whose custody that paper is.

Ans. My own.

Qut. 93. How long has it been in your custody?

Ans. I think since March, 1860.

Qut. 94. From whom did you procure it, or where did you find it?

Ans. I found it in the banking-house of Tallman, Powers & McLean. It was delivered to me by Wm. McLean.

Qut. 94½. State in whose handwriting it is.

Ans. In the handwriting of Chas. Powers, as I believe.

994 Qut. 95. State when you found it, whether or not it was in any envelope or enclosure.

Ans. I think it was in an envelope.

Qut. 96. Have you that envelope now in your possession?

Ans. I have.

Qut. 97. In whose handwriting is the superscription upon it?

Ans. Charles Powers, I believe.

Qut. 97½. Please produce said envelope as an exhibet.

(The said envelope is here produced by the witness, and is annexed, marked Exhibet M.

The said exhibet objected to as immaterial and incompetent in evidence against these defendents.)

Qut. 98. Produce the paper found in the envelope, stated by you to be in the handwriting of Charles Powers.

995 (Objected to because said paper is incompetent in evidence, as consisting of the mere declaration of said Powers, made without the knowledge of the defendants, and being mere hearsay as to them.)

The witness here produced the said paper, which is offered in evidence by complainant, and the said is annexed by copy marked N.

(The said exhibet objected to for the same reason as the interogatory.)

Qut. 99. Do you know, or can you set forth, any other matter or thing which may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be meaterial to the subject of this

your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I think of nothing.

R. D. CONGDON.

No. 6.—*Second examination of George Wilson.*

996 George Wilson produced, sworn, and examined on the part of the complainant:

(The examination of the said witness objected to by solicitor of def'ts because the deposition of the said witness has already been taken by the complainant in this cause, and no order of court has been made for his re-examination.)

Qet. 1. What is your name, age, place of residence, and ocupation?

Ans. George Wilson; about 70; farmer; near Duck Creek, in this county.

Qut. 2. Are you acquainted with the parties to this suit, or either or any of them, & which of them, and how long have you known them?

Ans. I know most of them; know James May, Mr. E. Cook, John P. Cook, Mr. Sargent, Geo. L. Davenport, and Antoine Le Claire. I did know, have known, the most of them for 10 or 12 years.

997 Qut. 3. State if you know about what time Antoine Le Claire died.

Ans. I don't exactly remember; recollect of being in his office a short time before he died.

Qust. 4. How long since he died?

Ans. Upwards of two years.

Qut 5. Are you acquainted with the property or farm formerlly owned by Capt. May, complainant, called and known as Rose Bank?

Ans. I am.

Qust. 6. State how many acres it contained, and its relative position to the city of Davenport.

(Objected to as immaterial.)

Ans. It contained 144 acres, or thereabouts, and is two miles nearly due north of Davenport.

Qut. 7. Where you acquainted with the property in March or July, 1859, or before that time?

Ans. I was acquainted with the property before that time.

998 Qut. 8. State what knowledge you had of the property, and your means of knowledge.

Ans. I owned the farm and sold it to James May, in 1853.

Qut. 9. State whether or not any portion of the time since 1859 you have resided near this farm; and, if so, how near have you resided to it, and what portion of the time?

Ans. I resided upon it from March, 1860, until the spring of 1862, nearly two years.

Qut. 10. How near do you now reside to it?

Ans. Seven miles.

Qut. 11. State whether you have or have not, since the year 1852, had a general acquaintance with and knowledge of this farm.

(Objected to as leading.)

Ans. I have had a general acquaintance with it.

999 Qut. 12. State what improvements there where on this property in March, 1859.

(Ojected to as immaterial.)

Ans. A good dwelling-house, barn, and sundry cattle-sheds. The farm was all well fenced, a young thriving orchard, a good well and cistern.

Qut. 13. Can you state about how near to this farm city lots have been laid out?

(Objected to as wholy immaterial.)

Ans. About half a mile.

Qut. 14. What, in your judgment, was the value of that property on or about the 8th of March, 1859?

(Objected to as immaterial, and also because the witness has not shown himself competent to answer the question, being a mere matter of opinion.)

Ans. I was not in the country at that time & do not know.

Qut. 15. How long before that time had you seen it?

1000 Ans. Not since 1853.

Qut. 16. About how long after the 8th of March, 1859, did you see it?

Ans. About the middle of May.

Qut. 17. How near did you live to the premises after the middle of May of that year?

Ans. Two miles.

Qut. 18. State whether or not, during the year after the middle of May, 1859, you saw Rose Bank often or otherwise; and whether after that time you were acquainted with the condition and value of the property.

Ans. I saw it frequently, and was acquainted with its condition; as to its value I can't say. It was valuable, but as to price, that is a matter of opinion.

Qut. 19. What, in your judgment or opinion, was a fair and reasonable value of that property in May, June, & July, 1859?

1001 (Objected to as immaterial and because the witness has not been shown competent to form a correct opinion as to such value.)

Ans. Sixty dollars an acre.

Qut. 20. You stated that you occupied this farm from the year 1860 to 1862; at what time in the year 1860 did you go into possession of it?

Ans. I think it was on the 18th of March, 1860.

Qut. 21. How long did you occupy the premises?

Ans. Until March, 1862.

Qut. 22. Who occupied the premises during the year 1859?

Ans. I don't know.

Qut. 23. State, if you know, who was living on the premises at the time, and before you went into possession on the 18th of March, 1860.

1002 Ans. I do not know the man's name; it was some man taking care of it for Joe Le Claire.

Qut. 24. Under whom did you go into possession of the premises, if any one?

Ans. George L. Davenport.

Qut. 25. With whom did you make the contract for the occupation of the premises?

Ans. With George L. Davenport.

Qut. 26. How long before the time you went into possession?

Ans. About six weeks.

Qut. 27. State whether or not, at any time, you occupied these premises under Joseph A. Le Claire; and, if so, when?

(Objected to as leading.)

Ans. The 2nd year I was there, I was under Joe. Le Claire.

1003 Qut. 28. About what time did you make the contract with Jos. A. Le Claire?

Ans. I think it was in the early part of the year following.

Qet. 29. State whether it was before or after the death of Antoine Le Claire.

Ans. It was before.

Qust. 30. State whether or not, about the month of January, 1861, you had any conversation with the def't Geo. L. Davenport, in respect to this property, known as Rose Bank; and, if you did, state what he said.

(Objected to on the part of all the defendants, except Geo. L. Davenport, as not competent in evidence against them.)

Ans. I did; he said he had sold the farm to Antoine Le Claire.

Qut. 31. State whether at any time prior to the death of Antoine Le Claire, you had any conversation with him in respect to the own-
1004 ership or disposition of this property; and, if so, state what he said in that conversation, and how long it occured before his death.

Ans. I had; I was in his office a day or two before he was taken ill, and he told me he had bought the farm for Joe's children, and that I should have to pay the rent to Jos. Le Claire; this was two or three weeks before his death.

Qut. State how much rent you paid for these premises in all, during the two years you occupied them, from March, 1860.

(Objected to as immaterial.)

Ans. Seven hundred dollars.

Qut. 33. To whom did you make the payments of this rent?

Ans. Three hundred & fifty dollars to Geo. L. Davenport, & $350 to Jos. Le Claire.

Qut. 34. Do you know the defendant Louis C. Dessaint?

1005 Ans. I have spoken to him, and know him a little.

Qut. 35. State whether at any time during the years 1860 or '61, he assumed any control over these premises; and, if he did, state what.

(Objected to as immaterial.)

Ans. He did not.

Qut. 36. State whether he did at any time assume any control over these premises; and, if so, what, and at what time?

Ans. He came with Joe Le Claire in the spring of 1862, when the sheriff was on the premises, for a portion of the rent; I asked him what he wanted there; he said that he came as Joe's friend, to try to settle the rent charge amicably; I told him I could settle it without him; he said he could assist in putting a value on things, if I could not raise the money; and he did so assist.

Qut. 37. State whether or not Dessaint came to these premises
1006 at any other time while you were in possession of them, or at any time gave any directions or instructions in respect to your management of the farm.

(Objected to as immaterial.)

Ans. Not before the settlement of the rent; he found a great deal of fault after we had settled the rent; said we had not managed the farm well.

Qut. 38. State whether at any time you had a conversation with the def't Davenport, in which he gave you any instruction as to whom the rent should be paid; and, if he did, to whom?

Ans. I did; he told me to pay it to Jos. Le Claire, several times.

Qut. 39. From your acquaintance with the Rose Bank farm, and your

knowledge of the property, state whether or not a sale of it could have been profitably made in July, 1859, by dividing it into parcels, and selling it.

1007 Objected to as leading, immaterial, calling for a mere opinion or conjecture of the witness, which is not competent in evidence, and not calling for any fact.

Ans. I think it might decidedly so to great advantage.

Qut. 40. How much more, in your judgment, would it have been worth sold in parcels than in a body at that time?

(Objected to for the same reasons as the last interogatory, and also because the witness has not been shown competent to form any correct opinion on the subject.)

Ans. Twice as much.

Qut. 41. Do you know or can you set forth any other matter or thing which may be of benefit or advantage to the parties in this cause, or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set

1008 forth the same fully and at large in your answer.

Ans. I do not.

The further taking of these depositions is here adjourned, and at the request of and to accomodate the solicitor for the defendants the adjournment is made to Saturday, January 23d, 1864, at 9 o'clock a. m., the pl'ff in the mean time urging that the examination proceed from day to day.

R. LINDERMAN, *Com'r.*

SATURDAY, *January 23d—9 o'clock a. m.*

Examination of the witness Wilson resumed pursuant to adjournment.

Cross-examined by Jno. N. Rogers, esq., solicitor for def'ts, who propounds the following cross-interogatorys, not waiving any objections to the taking of these depositions or any of them, or to the examination of this witness, but expressly reserving the same:

Cross-int. 1. What is your native place, and where did you reside prior to 1852?

Ans. Lancashire, England; resided part of the time prior to

1009 1852 in Iowa on my farm—that farm—from 1849 to 1850; I resided in Davenport from September of 1849 to the spring of 1850, and from 1850 to 1853 at Rose Bank farm; previous to 1849 I resided in Liverpool, England.

Cross-int. 2. What was your occupation while you lived in England?

Ans. I was a wine merchant and farmer as well.

Cross-int. 3. Where were you in the interval between 1853 and 1859?

Ans. In Liverpool the first two years, and in Ireland the latter part of the time—four years.

Cross-int. 4. When did you return to Iowa?

Ans. On the 7th of May, 1859.

Cross-int. 5. In what, if any, business did you engage on your return here, and where?

Ans. I rented a farm from Mr. Geo. Davenport, I think in 1860; I done nothing until I took the farm.

1010 Cross-int. 6. Did you buy or sell any real estate after your return from England, prior to your taking said farm?

Ans. No.

Cross-int. 7. In your direct examination you say that city lots had

been laid out about half a mile from said farm. What kind of lots do you refer to as to size?

Ans. I think they are ¼ of an acre to an acre in size; I don't know the exact size, or exactly how far from the farm; I think they are about ½ a mile; they may be a little more.

Cross-int. 8. When were they laid out and by whom?

Ans. I don't know.

Cross-int. 9. How do you know of the fact of their being laid out?

Ans. By the small houses, and lots built upon and fenced, and by hearing complaints of high city taxes.

1011 Cross-int. 10. In your direct examination you say that Antoine Le Claire shortly before his death told you that he had bought the farm for Joe's children. Did he tell you from whom he had bought it in that conversation?

Ans. He did; from Geo. L. Davenport; I remember it distinctly.

Cross-int. 11. You say in your direct examination, that in January, 1861, Geo. L. Davenport told you he had sold the farm to Antoine Le Claire; and you also say in another part of your direct examination that said Davenport told you to pay the rent to Joe Le Claire; were these things said in the same conversation or in diferent ones?

Ans. I can't remember particularly; I think it was in the same conversation; I believe it was at the same time.

Cross-int. 12. What rent did he tell you that you were to pay to Joe Le Claire?

Ans. He did not mention any sum.

1012 Cross-int. 13. Was it the future or the past rent, or both, that he told you you were to pay to Joe Le Claire?

Ans. The future.

Dep. of G. Wilson—re-direct int. No. 1 to No. 9.

Direct examination resumed:

Int 1—re-examination. State what you know, if anything, in respect to the laying out or selling of land in parcels near or adjoining Rose Bank in the year 1859 or since.

(Objected to as immaterial.)

Ans. I don't know of anything upon that head.

Int. 2. Have you any knowledge that Geo. L. Davenport, a defendant in this suit, divided up and sold in parcels or small lots a piece of land owned by him near to or adjoining Rose Bank? If you have any knowledge on that subject, state all you know about it.

(Objected to as leading, immaterial, and because the subject is susseptable of documentary proof, and because the question does not
1013 refer to any particular time.)

Ans. I know that he had some land near it that he divided, but when I don't know. It was within about ¼ of a mile. I don't know how much he sold. I know that he sold about four acres less than ¼ of a mile from the farm. It was sold for building purposes a short time previous to my coming to Davenport in 1859, to Michael Howard.

Int. 3. State what you know, if anything, about the division and sale in parcels of lands owned by Charles Kinkead, lying near or adjoining Rose Bank.

(Objected to for the same reasons the last interogatory.)

Ans. All I know on this subject is what I have heard.

Int. 4. Have you any knowledge that other persons have entered into

and taken possession of small parcels of land near to Rose Bank, which were formerly owned by Chas. Kinkead? If you have any
1014 knowledge on the subject, state it, giving the names of such persons and about the time they took possession.

(Objected to as immaterial, leading, and not proper on re-examination.)

Ans. I have. James Baker, Mr. Saddoris, & Mr. Mathews. I don't know when they took possession; it was previous to 1859.

Int. 5. State, if you know, whether any other person than Mr. Howard mentioned by you has entered into or taken possession of portions or parcels of a lot of land lying near to Rose Bank, formally owned by the defendent Davenport. State fully what you know on the subject, if anything, the name of such person or persons, the quantities of land they respectively occupy, and as near as you can the time or times they went into possession.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I don't know of any person except Howard.

1015 Int. 6. From May, 1859, to the first of January following, had you or not a general knowledge or acquaintance with the prices at which property was sold in Davenport and vicinity?

(Objected to as leading and not proper on re-examination.)

Ans. Only from hearsay.

Int. 7. State whether your information was derived from persons who were buying and selling property, or otherwise.

(Objected to for the same reasons as the last preceeding interogatory & also as immaterial & calling for hearsay.

Ans. From parties selling or wishing to sell.

Int. 8. State at what time of the year, and in what year, it was that defendant Dessaint came to Rose Bank, as stated by you.

(Objected to as immaterial and not proper on re-examination, the subject not having been inquired about in the cross examination.)

Ans. In the spring of 1862.

1016 Int. 9. In your answer to question 19 on your direct examination, you state that the value of Rose Bank farm in May, June, & July, 1859, was $60 per acre, and in your answers to the 39th & 40th direct interogatories you state that a sale of the same in parcels would be a great advantage, and that the property would be worth twice as much; now, is your estamate, at $60 per acre, an estamate of the value of the property if sold in a body or in parcels?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. $60 an acre is my estimate if sold for farm purposes in a body.

GEORGE WILSON.

No. 7.—*Dep. of A. H. Davenport resumed—cross-int. No. 1 to No. 21.*

The examination of the witness Adrian H. Davenport, resumed.

Cross-examined by Jno. N. Rogers, esq., solicitor for the def'ts who propounds the following cross-interogatories, not waiving any objections to the taking of these depositions, or any of them, or to the examination of this witness, but exprssly reserving the same:

1017 Cross-int. 1. State whether the collateral securities which you say in your direct examination you gave to Antoine Le Claire in notes on various parties were not all of them notes given by purchasers from you or from Le Claire of portions of the property conveyed by Le-Claire to you, and mortgaged back by you to him, as stated in your direct examination, and the payment of which would entitle the makers

thereof to conveyances to them respectively of the portions of the said property so purchased.

(Objected to on the ground that the question calls for secondary evidence and for the contents of papers which themselves are the best evidence and should be produced.)

Ans. The collateral notes which I spoke of in my direct examination, which I gave to Mr. Le Claire, are not all the notes of parties who had purchased of this reserved land which I purchased from Mr. Le Claire. The rest of the notes were made by purchasers of portions of said land, and the payment of which would entitle them to a deed.

1018 Cross-int. 2. In your direct examination you speak of an agreement between yourself and Antoine Le Claire in reference to the foreclosure of your mortgage to him. State at whose instance or suggestion the said agreement was made.

Ans. At my own, sir.

Cross-int. 3. State what were the reasons and motives which lead to the proposal and adoption of said agreement, so far as you know the same.

(Objected to as immaterial, and because it calls for the mental operations, and views, and motives of the witness, and not for any fact.)

Ans. With me it was entirely to get the heavy debt off of my shoulders, because I did not believe I could ever pay it, and my motive was entirely to benefit myself.

Cross-int. 4. What reasons and considerations did you state to said Le Claire in proposing to him said agreement and in favour of

1019 making the same?

(Objected to as immaterial, as calling for the declaration, and assuming a fact which is not proved. Question withdrawn.)

Cross-int. 5. Did you propose to said Le Claire to entre into said agreement, or such an agreement?

(Objected to as having been answered already by the witnessses' answer to cross-interogatory 2.)

Ans. I did, sir.

Cross-int. 6. State what reasons or considerations, if any, you stated to said Le Claire as grounds for entering into such an agreement.

(Objected to as immaterial, and as calling for the declarations of the witness.)

Ans. I gave him as a reason that I was embarrassed otherwise besides this debt to him, that property was depreciating, and I saw no possible chance of my being able to pay it.

1020 Cross-int. 7. State what was the fact at that time as to your pecunary condition and ability to pay said mortgage.

(Objected to as immaterial.)

Ans. The fact was that I was entirely unable to pay it.

Cross-int. 8. State whether or not you have ever since continued unable to pay said mortgage.

(Objected to as immaterial, and as not legitimate cross-examinnation.)

Ans. I have; I am not now, nor have I been since able to pay it.

Cross-int. 9. State whether or not said mortgage debt could at any time since the said agreement have been collected of you by legal proceedings.

(Objected to for the same reasons as the last preceeding question.)

Ans. I think not, sir.

Cross-int. 10. State what were your relations with said Antoine

1021 Le Claire during his lifetime, how long you had known him, and how intimately.

Ans. I had known him for upwards of 30 years; and his relations with me were always of the most friendly character. He was the best friend I ever had since I arrived at manhood.

(Last paragraph of the answer objected as not responsive to the question.)

Cross-int. 11. Do you know of any reason or motive which influenced said Le Claire to enter into said agreement with you, other than those you have stated, as assigned by you to him therefor?

(Objected to as immaterial, and as assuming a fact which is not proved, & calling for motives which influenced Le Claire, which the witness cannot be presumed to know.)

Ans. I do not, sir.

Cross-int. 12. You speak in your direct examination of compromises made by the executors of Antoine Le Claire, since his death, with
1022 certain of the purchasers of portions of said property, mortgaged by you to him, which compromises consisted in surrendering to said purchasers their notes for the purchase-money and taking back from them the bonds which they held for a conveyance of the land, on payment of said notes; state if you know why said compromises were made.

(Objected to as immaterial, and not legitimate cross-examination.)

Ans. My being the agent, I advised them to do so, and gave as a reason that the parties were unable to pay, and had no other property out of which to make the payment. And I thought it for the interest of the estate to get the property back, without going to law.

(Answer objected to as giving the declarations and opinions of the witness, and not facts, and as not responsive to the question.)

Cross-int. 13. State what the fact was, if you know, as to the pecuniary ability of the parties with whom these compromises were made, and whether or not they had any property out of which their said
1023 notes could have been collected.

(Objected to as immaterial, not legitimate cross-examination—as secondary evidence—and as calling for the opinion of the witness.)

Ans. There was none of them, with whom I advised a compromise, that had any property out of which the debt could have been made.

Cross-int. 14. Do you wish to be understood as testifying that the value of the property mortgaged by you to Le Claire, the title to which he regained by the foreclosure and sale thereunder, was in March, 1859, as much as $20,000?

(Objected to as immaterial, as to how the witness wishes to be understood, and as not calling for facts, or the witnesses' knowledge of facts, and is not a legitimate or pertinent enquirey, either upon direct or cross-examination.)

Ans. I do not wish to swear that it was worth as much as that. I think I overestimated it. I don't wish to swear it was worth that, because I don't know what it was worth.

1024 Cross-int. 15. Is it not true that at that time the value of real estate generally was very greatly depreciated, especially if unimproved, and was it not difficult to make sales thereof at all?

Ans. I think it was, sir; that was my experience.

Cross-int. 16. Did not such continue to be the case for the two years following March, 1859?

Ans. It did, sir.

Cross-int. 17. State whether the said property mortgaged by you to Le Claire is situated in the town of Le Claire in this county.

Ans. It is inside of the corporate limits of the said city of Le Claire.

Cross-int. 18. State what is the character and discription of said property.

Ans. Some of it is prarie, some timber, some level, some rolling; it is good soil; good stone on it. It is a choice piece of land.

1025 Cross-int. 19. Does it consist wholy or in part of vacant town-lots in said city of Le Claire?

Ans. A very large portion of it is vacant town-lots; 5-acre lots and small lots.

Cross-int. 20. State what has been the state of the market as to vacant lots in the said town of Le Claire for the last five years; whether the prices or market values thereof have not been greatly depreciated, and cash sales dificult to effect.

(Objected to as not legitimate cross-examination. 2nd. As a leading enquery upon matter not called for or refered to in the direct examination of the witness.)

Ans. The demand for town lots in Le Claire has been very limited, and cash sales very hard to make; the prices have been greatly depreciated.

Int. 21. Has not the property and business of said town been constantly declining since the financial crisis of 1857?

(Objected to for the same reasons as the last preceeding interogatory.)

1026 Ans. It has.

Dep. of A. H. Davenport resumed—direct int. No. 1 to No. 23.

Direct examination resumed:

Int. 1. Re-direct examination. You state in your cross-examination that there is good stone upon this property known as the Le Claire reserve. How is the stone found, in quarries or otherwise?

Ans. There is every indication of good stone on said property; it crops out in different places, but no quarries have been opened on all sides of it.

Int. 2. How far does this portion of the Le Claire reserve, on which this stone is found, lie from the Mississippi River?

Ans. Perhaps at one point between $\frac{1}{4}$ & $\frac{1}{2}$ a mile—perhaps at another point I now have in view, over a $\frac{1}{2}$ mile, between $\frac{1}{2}$ & $\frac{3}{4}$ of a mile.

Int. 3. State the quality of this stone. State whether or not

1027 it is good for building purposes.

Ans. On the south part of it I should think it was limestone mostly. On the north part I should think it was a sandstone, & good for building purposes.

Int. 4. What is the distance by river from that part of the reserve on which stone is found to the city of Davenport?

Ans. I think it is called 16 or 17 miles by river.

Int. 5. What is the distance from that point to the city of Lyons, in Clinton County, Iowa, and the city of Fulton, in the State of Illinois?

Ans. It is called about 25 miles.

Int. 6. What is the distance to the city of Clinton, in said Clinton County?

Ans. I think it is about two miles less than it is to Lyons by river.

Int. 7. How many acres of timber were there on this property at

1028 the time you made this arrangment with Le Claire to foreclose the said mortgage?

Ans. I could not tell the number of acres.

Int. 8. State about how many acres.

Ans. There was perhaps somewhere from 30 to 50 acres covered with undergrowth, and some large timber.

Int. 9. State how the large timber would answer for building purposes or for lumber.

Ans. Very little of it would have answered either for building purposes or lumber.

Int. 10. How many acres would have answered for such purposes?

Ans. I don't think there was one acre that would have answered for building purposses or for sawing; I had had it mostly cut off myself before that time.

Int. 11. State whether since your agreement with Le Claire to foreclose any portion of the timber then standing on the premises has been taken off by the consent of Le Claire or his executors, for wood
1029 or other purposes; and, if so, what portion?

(Objected to as immaterial, and not proper on re-examination; the subject not having been enquired about in the cross-examination.)

Ans. There has been, by the consent of Mr. Le Claire, and by the consent of his executors, and a considerable taken off without their consent, by being stolen, that I could not prevent. Perhaps the amount that I have taken off by their consent would be from $200 to $300.

Int. 12. How many acres were covered by this mortgage from you to Le Claire?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. If my memory serves, it was somewhere from 340 to 350 acres.

Int. 13. State whether real estate in Scott County has been higher or lower in the last two years than it was in 1859, and whether it is now higher or lower than it was then.

(Objected to for the same reasons as interogatory 11.)

1030 Ans. Perhaps in some parts of the county farming lands have been higher, but in that part of the county where this property is situated I don't think it has been any higher, except it might be some few farms; and in that part of the county I don't think it is any higher now, so far as my knowledge extends.

Int. 14. Have any sales been made by the executors of Antoine Le Claire of any portions of this reserve within the last nine months?

(Objected to for the same reasons as the 11th int., and also because the subject was fully enquired about on the first direct examination.)

Ans. There have two sales been made.

Int. 15. You stated in your direct examination that the receipt given to you by Antoine Le Claire for the collaterals delivered to him, you did not find among your papers. State whether or not you serched your papers for the purpose of finding it.

1031 (Objected to because the witness has made no such statment, and also because the question is not proper on re-examination.)

Ans. I examined my papers after I went home; I was not able to find it.

Int. 16. Can you say from the examination you made whether or not the paper is lost or destroyed?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I could not say. My impression now is that the said paper was left with John P. Cook.

Int. 17. Will you look at Exhibit "E" annexed to the complainant's bill, and state whether or not that is a copy of said instrument?

(Objected as not proper on re-examination, & also because it does

not appear that the witness has ever compared said exhibit with the original instrument.)

Ans. I could not say whether said exhibit is a complete copy. I do not think it contains all [all] of said notes.

1032 Int. 18. Are there any accounts contained in the original receipt that are not in that exhibit; or does the original contain these and others beside?

(Objected to because the original is the best evidence, and also because the question is not proper on re-examination, and also because it is immaterial.)

Ans. The original contains all that are in said exhibit, and others beside, with this exception: I see two notes here by Andrew Black; I think they should be by Andrew Jack; but perhaps they are right, and not postive that they are not right.

(The said Exhibit E is here offered in evidence, and is annexed by copy marked Exhibit O.

The said exhibit objected to for the same reasons as the last interogatory.)

Int. 19. You stated in your answer to a question put to you on cross-examination that you first proposed to Le Claire to make the arrangement about the foreclosure of the mortgage; will you state

1033 whether you now recollect of having had a conversation with John P. Cook on the subject before you talked with Mr. Le Claire about it, and which Cook gave you advise about entering into the arrangment?

(Objected to as immaterial, not proper on re-examination, leading, and because the declarations of said Cook are not competent in evidence against anybody but himself.)

Ans. Yes; I recollect distinctly about having a conversation with Mr. Cook, because he was my consulting lawyer and did all my business.

Int. 20. Do you recollect who first mentioned the subject, you or Mr. Cook? If you do distinctly recollect, state.

(Objected to for the same reasons as the last interogatory.)

Ans. I do recollect; I first mentioned the subject to Mr. Cook. We talked over the matter, and then I went to Mr. Le Claire.

1034 Int. 21. How many conversations had you with Cook, if more than one, before you completed the arrangment with Mr. Le Claire?

(Objected to for the same reasons as the 19th int.)

Ans. Perhaps we may have had two before Mr. Le Claire & myself went to Cook's office to have the agreement drawn up.

Int. 21½. Did Mr. Cook advise you to make such an arrangment with Mr. Le Claire, or not to make it, on consultation with him?

(Objected to for the same reasons as the 19th interogatory, and also because said question relates to consultation between the witness and his legal advisor, which are not competent in evidence.)

Ans. He advised me to make it, if I could do so after my stating to him my condition pecuniarily.

Int. 22. You stated in your examination that John P. Cook was the advisor of Antoine Le Claire. State whether or not he acted as

1035 such in bringing about this arrangment between you and Mr. Le Claire.

(Objected to as leading & not calling for any fact but the inferances of the witness, and as not proper on re-examination.)

Ans. I could not say whether he was the sole advisor of Mr. Le Claire or not in this matter. In some cases I know Cook was Le Claire's

lawyer; but if there had been any litigation in this matter I believe Mr. Cook would have acted as my attorney. He was my lawyer, and always had been, and I expected him to assist me in making the best arrangement I could.

Int. 23. You say in answer to question 21, re-examination, that you had two conversations with Mr. Cook before you closed up the matters with Mr. Le Claire. In any conversation on the subject with Mr. Cook, did he state to you whether or not he had had any conversation with Mr. Le Claire on the subject, and as to the willingness of Mr. Le Claire to make such an arangment? and, if yea, state what he said.

(Objected to for the same reasons as the 19th, & also 21½ interogatory.)

1036 Ans. Yes; he told me that he had talked with Mr. Le Claire, and he thought there could be an arrangment made, & that Le Claire was willing to make the arangment.

On reading the foregoing examination to the witness, A. H. Davenport, he wishes to explain or correct his answers to int. 29, as follows: That on reflection there was a written agreement extending the time of the payment of the notes. My impression now is that said agreement was left with John P. Cook, but am not certain.

A. H. DAVENPORT.

The further taking of these depositions is here adjourned until Monday, January 25th, at 4 o'clock p. m.

R. LINDERMAN, *Com'r.*

JANUARY 25, 1864.

Examination resumed pursuant to adjournment.

Joseph A. Le Claire produced and sworn on the part of the complainant.

1037 The certificate of Rufus Linderman, commissioner, is attached to the package containing the depositions of J. A. Le Claire, Dennis Navin, J. W. Harrison, & Jas. Thorington, and covers also the foregoing depositions of M. D. Snyder, Geo. H. Parker, R. D. Congdon, & George Wilson. The depositions are seperated for the convenience of examining them.

W. G. WOODWARD,
Clerk C. C. U. S., Iowa.

1038 No. 10.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire and others. } In equity.

The following papers consist of—
Objections of the defendants.
1st. The deposition of Jos. A. Le Claire.
2d. " do. of Denis Navin.
3d. " do. of J. W. Harrison.
4th. " do. of James Thorington.
5th. " do. of Dennis Navin—cross-interrogatories.

1039 No. 1.—*Deposition of J. A. Le Claire—direct ints. No. 1 to No. 432.*

Joseph A. Le Claire produced and sworn on the part of the complainant:

1040 (The examination of this witness objected to by def'ts' solicitor because his deposition has heretofore been twice taken in this cause by the complainant, and the order for his re-examination has been surreptitiously and erregularly obtained, without notice to, or the knowledge of, defendants or their council, who will move at the earliest opportunity for the recinding of said order.)

Int. 1. What is your name, age, place of residence, and occupation?

Ans. J. A. Le Claire; 30 years; Davenport, Scott County, Iowa; not engaged in business at present.

Int. 2. Are you acquainted with the parties to this suit, or either or any of them, and, if so, which of them; and how long have you known them?

Ans. Am acquainted with all the parties; have known them all for seven years, and some of them longer.

Int. 3. For how long before his death had you known Antoine Le Claire?

1041 Ans. All my lifetime.

Int. 4. State, if you can, the time of his death.

Ans. The 25th of September, 1861.

Int. 5. State if any relationship existed between you and Antoine Le Claire; and, if so, what?

Ans. He was my uncle.

Int. 6. State whether you at any time lived with, or was in the employ of, Antoine Le Claire.

Ans. I lived with him from the time I was seven years old, and was employed by him 'til the time of his death.

1042 Int. 7. State, if you know, whether or not Antoine Le Claire, for several years before his death, employed a business agent; and, if yea, state if you know who was such agent.

Ans. He did; and I suppose I was the person so employed.

Int. 8. State, as near as you can, the time when your connection with Mr. Le Claire as such business agent commenced, & how long it continued.

Ans. I commenced to attend to his business when I was 16 years old; continued to do so (with exception of about 18 months when I was in St. Louis at school) until the time of his death.

Int. 9. From the time you commenced living with Mr. Le Claire, as stated by you at the age of 7 years, and up to the time you commenced acting as his business agent, with whom did you live?

1043 Ans. His house was my home from the time I was seven until I was 21 years old.

Int. 10. Are you acquainted with the farm and property known and distinguished as Rose Bank?

Ans. I think I am.

Int. 11. How far does it lie from the limits of the city of Davenport? (Objected to as immaterial.)

Ans. Between a mile and a mile & a quarter, I should think.

Int. 12. Describe it, if you can, by meets and bounds, or section, township, and range.

Ans. I cannot correctly.

Int. 13. State, if you can, in what section it is.

Ans. I cannot.

Int. 14. About how many acres does it contain?

Ans. I think 145.

1044 Int. 15. Were there any improvements on the property in the spring of 1859; and, if so, what?

(Objected to as immaterial.)

Ans. There was two dwelling-houses, one quite a good, comfortable house, the other dwelling worthless; a stable or barn; shed, and a poor fence arround the premises; a well, and a garden fence.

Int. 16. State whether or not the road leading from Davenport to Iowa City passed through this farm.

(Objected to as immaterial.)

Ans. There is a road passes through called the "Old Hickory Grove Road;" I never heard it called the "Iowa City Road."

Int. 17. State whether this is or is not the usually traveled carriage or wagon road between Davenport and Iowa City.

(Objected to as immaterial.)

Ans. From my knowledge of roads, I should think it was not the direct road.

1045 Int. 18. Does Rose Bank lie on one or both sides of this road you refer to?

(Objected to as immaterial.)

Ans. On both sides.

Int. 19. State whether or not there are fences on each side of this road where it passes through the farm.

(Objected to as immaterial.)

Ans. There are fences on both sides.

Int. 20. State whether or not the farm is watered by any stream.

(Objected to as immaterial.)

Ans. Duck Creek runs east through it, and another small creek running south.

Int. 21. State, if you know, who owned and occupied Rose Bank immediately prior to the spring of 1859.

(Objected to as immaterial, and because the ownership is susceptable of better evidence.)

Ans. I have never examined the records, and could not tell

1046 as to the ownership; I think Capt. May had possession of it.

Adjourned to Tuesday, January 26th, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

JANUARY 26TH, 1864—9 *a. m.*

Examination of J. A. Le Claire resumed, pursuant to adjournment.

Int. 22. How long had Capt. May, the complainant, been in possession of Rose Bank prior to the spring of 1859.

Ans. I do not know.

Int. 23. How long do you know of his having been in possession of it?

Ans. I cannot tell exactly.

Int. 24. State as near as you can the length of time.

Ans. I know of his living there for one year or more.

Int. 25. State who lived on the farm from 1856 to 1859.

Ans. I do not know, sir.

1047 Int. 26. Did you see anybody there during that time?

Ans. I did, sir.

Int. 27. Who?

Ans. I remember of seeing Capt. James May and his family.

Int. 28. Do you know of any other persons living there between 1856 and 1859 than Capt. James May & his family; if so, who?

Ans. I think there was a hired man living there at one time.

Int. 29. Whose hired man?

Ans. I cannot say for certain.

Int. 30. How are you enabled to say that he was a hired man?

Ans. I heard him say so.

Int. 31. Is all you know about it what he said?

Ans. It is, as far as I can remember.

Int. 32. Did he say whose hired man he was when he told you he was a hired man?

1048 (Objected to as calling for hearsay.)

Ans. I do not remember for certain.

Int. 33. Can you state at what work he was engaged, and where?

Ans. I saw him on the Rose Bank farm, but don't know what he was engaged at.

Int. 34. State in what year it was you saw this hired man there.

Ans. I think it must have been in 1859.

Int. 35. What was his name?

Ans. I did not learn.

Int. 36. How often did you see him on the premises?

Ans. Once or twice.

Int. 37. In what season of the year?

Ans. It was, I think, in the winter.

Int. 38. At this time, where was Capt. May living, if you know?

Ans. I do not know.

Int. 39. Where was the hired man living?

Ans. I think on Rose Bank farm.

Int. 40. In which house was he living—in the one that Capt. May had occupied, or the other—on the premises?

Ans. In the one that May had occupied.

1048 Int. 41. State whether or not he had a family.

Ans. I do not know, sir.

Int. 42. You state, in answer to interogatory 21, that Capt. May occupied or had possession of Rose Bank immediately preceeding the spring of 1859; state whether he had been living there for the entire year preceeding that time, or whether he moved there within that year.

(Objected to as immaterial, and because the witness has not testified that complainant occupied the farm or lived on it.)

Ans. I could not tell for certain.

Int. 43. How long do you know of his having been in possession of Rose Bank immediately preceeding the spring of 1859?

Ans. I cannot give any definite time.

Int. 44. State as definitely as you can the length of time.

Ans. I cannot tell any time particularly.

Int. 45. Do you know of his having been there one month, more or less?

(Objected to because the complainant has no right to cross-examine his own witness.)

1049 I know of his having been there, but what time I cannot tell.

Int. 46. How many times did you see him there?

(Objected to for the same reasons as last preceeding int., & as immaterial.)

Ans. I may have seen him once.

Int. 47. Do you mean by your last answer to be understood that you don't know whether you saw him there at all or not?

(Objected to for the same reasons as the last preceeding interogatory.)
Ans. I cannot say whether I saw him there at all or not.
(Answer objected to by complainant as not responsive.)
Int. 48. If you cannot state whether you saw Capt. May there at all or not, what makes you think that he was in possession of Rose Bank, as stated by you in your answer to the 21st int.?
(Objected to for the same reasons as the 46 int.)
Ans. From some business transactions I had with Capt. May, & conversations with him.
1050 Int. 49. What business transactions?
(Objected to as immaterial.)
Ans. Purchase of stock.
Int. 50. When were these purchases made?
(Objected to as immaterial.)
Ans. I think in the spring of 1859.
Int. 51. Where were they made?
(Objected to as immaterial.)
Ans. The conversation about buying, &c., were made, I think, in Davenport.
Int. 51½. State what purchases, if any, were made.
(Objected to as immaterial.)
Ans. I bought some horses & farming implements.
Int. 52. Of whom?
(Objected to as immaterial.)
Ans. Of James May.
Int. 53. Where were these purchases concluded and consumated?
(Objected to as immaterial.)
Ans. I disremember; think it was somewheres in town.
Int. 54. Was the property you purchased of May ever delivered to or received by you?
(Objected to as immaterial.)
1051 Ans. It was.
Int. 55. Where was that done?
(Objected to as immaterial.)
Ans. On the farm.
Int. 56. What farm?
(Objected to as immaterial.)
Ans. On the farm called Rose Bank.
Int. 57. Who were present when the property was delivered?
(Objected to as immaterial.)
Ans. I think it was John May.
Int. 58. Any one else?
(Objected to as immaterial.)
Ans. I do not remember.
Int. 59. Are you acquainted with John T. King?
Ans. I am.
Int. 60. State whether or not he was present when this property was delivered.
Ans. I cannot say, but think he was not.
Int. 61. State whose family was in the house on Rose Bank at the time you received this property you had purchased.
(Objected to as immaterial.)
Ans. I do not know as there was any family there.
1052 Int. 62. State where Capt. May was living at or about that time.

(Objected to as immaterial.)

Ans. I cannot, sir.

Int. 63. State whether your deposition has been taken in this cause before the present commissioner, or any other person.

(Objected to as immaterial.)

Ans. It has.

Int. 64. Is your recollection as to where Capt. May lived in the spring of 1859 as good or better than it was when your deposition was taken before?

(Objected to as immaterial, and in the nature of a cross-examination of the complainant's own witness.)

Ans. I don't think it is as good, sir.

Int. 65. If you stated in your former deposition that Capt. May did live on Rose Bank farm, and that he left it in the spring of 1859, is that statement more likely to be correct than your present statement?

(Objected to as in the nature of a cross-examination of com-
1053 plainant's own witness, and because it enquires about no matter of fact, but puts a hypothetical case, and asks the witnesses what is more likely, if such hypothesis be the fact, which is not a competent method of examining a witness.)

Ans. I think it is.

Int. 66. Do you now recollect that, in answer to the 1st interogatory put to you when your deposition was taken on the 1st day of May, 1863, before R. D. Congdon, you stated as follows: "I do not know when James May left Rose Bank farm. I did not go on the farm when he left it, but I had charge of it?"

(Objected to because it is not competent to ask the witness whether he gave such an answer in a written deposition made by him, said deposition not being produced or shown to him, and also because the complainant is not entitled to cross-examine the witness, nor to ask him what he testified on a former occasion, such enquiry being permissable on cross-examination, for the purpose of lying a foundation to impeach the witness.)

1054 Ans. I do not know. I suppose so. I answered them as I do now, the interogatorys, to the best of my knowledge.

Int. 67. You say, in answer to questions 21, that you think Capt. May had possession of the farm in the spring of 1859. When did he give up or surrender the possession of the same?

Ans. I do not know.

Int. 68. About when?

Ans. I could not tell.

Int. 69. In what year was it?

Ans. It must have been in 1859.

Int. 70. About what time in the year?

Ans. If it was in 1859, it was either in the winter or spring.

Int. 71. Was it before or after John May delivered to you at Rose Bank this property you had purchased of Capt. May?

Ans. I don't remember, sir.

Int. 72. What did you do with this property you had purchased of Capt. May? Where did you use it?

(Objected to as immaterial.)

Ans. It was used the following summer & spring in cultivating the farm.

1055 Int. 73. What farm?

(Objected to as immaterial.)

Ans. The farm called Rose Bank.

Int. 74. Who had possession or control of this farm then—I mean during the time the property you purchased of May was used on the farm, as stated by you?

Ans. I did.

Int. 75. State the time you took such possession as near as you can.

Ans. I think it was in the spring of 1859.

Int. 76. State who, to the best of your knowledge, had the possession immediately before you took it in the spring of 1859.

(Objected to as not asking the witness to state any fact which he knows.)

Ans. I think it was John May. I can't say for certain.

Int. 77. Is John May mentioned by you any way related to the complainant, James May; and, if so, in what way?

Ans. I think he is a son.

Int. 78. About how old was he in the spring of 1859?

1056 (Objected to as immaterial.)

Ans. I could not tell. I judge him to have been a young man.

Int. 79. State whether, at the time you purchased this property from Capt. May, & received the same at Rose Bank, as stated by you, there was any other stock on the premises, or any household goods in the house, or farming implements on the premises.

(Objected to as immaterial.)

Ans. I could not state for certain, but think there was some little furniture in the house on the place. I think there were other stock and an old buggy said to belong to John T. King, but cannot say for certain.

Int. 80. State, if you know, who took away this household furniture and the stock you speak of.

(Objected to as immaterial.)

Ans. I don't think I can tell, sir.

Int. 81. Where they taken away before or after you took possession?

(Objected to as immaterial.)

Ans. I don't remember now, sir.

Int. 82. State whether or not, when you took possession of the premises, or shortly after, you put any one in the house, as tenant or otherwise; and, if yea, who?

1057 (Objected to as immaterial.)

Ans. I did put a man in the house as tenant by the name of Dennis Navin.

Int. 83. State whether this household furniture was taken away before or after Neven went into the house.

(Objected to as immaterial.)

Ans. I do not remember.

Int. 84. How long did you retain possession of Rose Bank after you took possession in the spring of 1859, as stated by you?

Ans. About the usual time of a renter—that is, to put a crop in and take it off; if I am not mistaken it was about a year.

Int. 85. Who then took possession?

Ans. I think it was George L. Davenport.

Int. 86. How long did Navin remain in the house on the premises?

Ans. If I remember right, it was about a year.

Int. 87. State who then went into the house, if you know.

Ans. I do not know.

1058 Int. 88. Was Navin a hired hand by you, or did he work the premises on shares?

Ans. He got half the products and I the other half, (I don't know what you might call it;) that was the agreement between us.

Int. 89. State how you came to take possession of these premisses, as you stated you did in the spring of 1859.

Ans. To say for certain is something that I don't know exactly.

Int. 90. How came you to go there?

Ans. I was told that I could have the proffits, whatever I could make off the farm that year; I was to till it and work it.

Int. 91. Who told you that?

Ans. I think it was my uncle Antoine Le Claire.

Int. 92. Who was present, if any one, when Antoine Le Claire told you that you could have the profits and whatever you could make off of the farm, as stated by you in your answers to the 90 & 91 interogatories?

(Objected to as immaterial.)

1059 Ans. If he told me so, I do not remember that there was any one present.

Int. 93. Where was it he told you this?

(Objected to as immaterial.)

Ans. I don't remember.

Int. 94. When was it; how long before you took possession of the farm?

(Objected to as immaterial.)

Ans. If it was at any time it was in the spring of 1859; it could not have been any great time before I took possession of the farm; I cannot tell how long.

Int. 95. Can you state who first commenced the conversation on the subject, you or Antoine Le Claire?

(Objected to as immaterial.)

Ans. I cannot.

Int. 96. When he told you that you could have the profits and whatever you could make out of the farm, as stated by you in your

1060 answers to int. 90 & 91, did you tell him whether you would work the farm on those terms or not?

(Objected to as immaterial.)

Ans. I do not remember whether at the time I said whether I would take it or not.

Int. 97. Did you tell him so at any other time?

(Objected to as immaterial.)

Ans. I do not now remember.

Int. 98. State about how long it was after Antoine Le Claire told you you could have the profits and whatever you could make on the farm, before you went into possession of it, as stated by you.

(Objected to as immaterial, because the same question has been put and answered.

Ans. If it was at any time, it must have been within a month.

Int. 99. You stated that you were acquainted with John T. King;

1061 do you recollect of going from Davenport to Rose Bank farm with him in the spring of 1859?

Ans. I am not certain, but think I road with Mr. King once out there; but what time, or in what year, I can't tell.

Int. 100. On this occassion did you go out with a team of Antoine Le Claire's or with some other team?

(Objected to as immaterial.)

Ans. I drive so many teams that I could not swear what team I did drive.

Int. 101. Are you acquainted with George Wilson?

Ans. I am; if the Wilson you refer to is the man that was here on Saturday last.

Int. 102. Are you acquainted with Geo. Wilson who was giving evidence in this case on Saturday last?

Ans. I think I am, sir.

Int. 103. State whether or not he occupied Rose Bank at any time between the spring of 1860 and 1862.

1062 Ans. I think he did, sir.

Int. 104. State if you know when his occupation of it commenced, and when it terminated.

Ans. I don't know as I am able to tell; all I know about it is, that he lived there.

Int. 105. State whether, in the spring of 1862, you were up at Rose Bank with the sheriff of Scott County while Wilson was on the premises, for the purpose of collecting the rents of Wilson.

(Objected to as immaterial.)

Ans. Dates I don't remember, but had to take some steps to compel Mr. Wilson to pay his rent; I don't remember whether I was there with the sheriff or not.

Int. 106. Do you not remember of going up there with the sheriff or his deputy in the spring of '62 with a notice of some kind to serve on Mr. Wilson for the purpose of securing the rent?

(Objected to as immaterial.)

1063 Ans. I remember of having to take some steps to secure the rent; but whether I went up at the very same time the sheriff did, I do not remember, I cannot say whether I did or did not; I went up there once, I think, after the sheriff had possession of the property.

Int. 107. You say in answer to the last interogatory, that you remember of having to take some steps to get the rent; state what steps you took.

(Objected to as immaterial.)

Ans. Legal steps, to keep from being swindled out of the rent.

Int. 108. State what steps you know of having been taken; specify them.

(Objected to as immaterial.)

Ans. I suppose the common steps that anybody would take; see a lawyer and have him attend to his business.

Int. 109. Do you mean by your last answer to say that steps

1064 were taken by which a suit was commenced against Wilson for the rent?

(Objected to as immaterial.)

Ans. I do not know whether you would call it a suit, or what, sir.

Int. 110. Was any proceeding commenced or any attorneys employed?

Ans. I don't know whether Mr. Wilson employed one or not; I consulted one. There was a proceeding commenced, if you call a sheriff's taking possession of the property a proceeding.

Int. 111. What attorney did you consult?

(Objected to as immaterial.)

Ans. It was either Mr. Putnam or Mr. Dow. I do not exactly remember which.

Int. 112. Did the attorney you consulted prepare any papers for the sheriff by virtue of which he took possession of the property?

(Objected to as immaterial.)

Ans. I don't remember; when I employ a lawyer I generally

1065 suppose he will do what is right.

Int. 113. Did you swear or make affidavit to any paper drawn by the attorney you consulted for the purpose of commencing proceedings to get possession of the property?

(Objected to as immaterial.)

Ans. I do not now remember whether I did or not.

Int. 114. Were you present when the sheriff took possession of the property, as stated by you?

(Objected to as immaterial.)

Ans. I don't know as I could say whether I was or not; I don't remember.

Int. 115. How then are you able to state that the sheriff did take possession of the property?

(Objected to as immaterial, and as cross-examination of the pl'ff's own witness.)

Ans. I have stated before, I think, that I saw the sheriff there.

1066 Int. 116. Can you give any other answer than the one you have given to the last question?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. If I remember right, he told me he had possession; after having a little trouble with Mr. Wilson, he fineally got possession.

Int. 117. Where was it the sheriff told you this, on the premises or somewhere else?

(Objected to as immaterial.)

Ans. I do not now recollect, sir.

Int. 118. Do you recollect the name of the sheriff that told you?

(Objected to as immaterial.)

Ans. I can't say as I really do.

Int. 119. Did you at that time, or subsequently, arrange this matter of rent with Mr. Wilson?

(Objected to as immaterial.)

Ans. Mr. Wilson fixed up his rent; whether it was just at that

1067 time or not, I do not remember; but it was about that time.

Int. 120. Did the sheriff take the property away from the premises at the time you saw him there, as stated by you?

(Objected to as immaterial.)

Ans. I did not see the sheriff take the property away; I do not think he did; I think he had a man take care of it out there.

Int. 121. You have stated that you saw the sheriff there; give the name of the sheriff you saw there.

(Objected to as immaterial.)

Ans. I can't say, of two, whether it was Mr. Pool or a German that he had.

Int. 122. What did you go up there for at the time you saw the sheriff there?

(Objected to as immaterial.)

Ans. The reason of my going was that I was told Mr. Wilson threatened the sheriff's deputy; that he would not allow him on the

1068 premises; and I went to see what was the trouble.

Int. 123. You state that the rent was arranged by Mr. Wilson at or about the time you saw the sheriff there; was it arranged with the sheriff or with you?

(Objected to as immaterial.)

Ans. I think Mr. Wilson came to see me, or sent for me, I don't know which, after finding himself in a trap. I think he fixed it with me, but am not positive.

Int. 124. What is the given name of the Pool refered to in your answer to int. 121?

Ans. I could not tell, sir.

Int. 125. State whether he was acting as deputy sheriff at the time you saw him on the premises, as stated by you.

(Objected to as immaterial, and because the witness has not stated that he saw him on the premises.)

Ans. That would be hard for me to tell. I suppose a man would not take a responsibility of that kind unless he was. I should think
1069 he was, or he would not have been there.

Int. 126. Do you know whether he was or was not deputy sheriff at that time?

(Objected to as immaterial, and because the question does not show distinctly who the person enquired about is.)

Ans. Probably he was—if you have reference to Mr. Pool.

Int. 127. Can you now give either the name of the sheriff that you say you saw on the premises, or the time you saw him there, or the name of any other person that was present except yourself & Mr. Wilson? If you can, do so.

(Objected to as immaterial and a mere repatition of previous questions.)

Ans. If I saw any one, Mr. Pool probably was the one, during the time we were urging Mr. Wilson to settle up his rent; I think I also saw two sons of Mr. Wilson during that time.

1070 Int. 128. You state in your answer to interogatory 115 that you had stated before that you saw the sheriff there. If you did see him there, why do you qualify your last answer by saying if you saw any one there Mr. Pool was probably the one?

(Objected to as immaterial and in the nature of a cross examination.)

Ans. If I saw any one as a sheriff, probably Mr. Pool was the one.

Int. 129. Is that the only answer you can give to the last interogatory?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I do not know but what it is. I don't see anything else I can answer to it.

Int. 130. Do you now mean to be understood that you did or that you did not see the sheriff at Rose Bank, at the time of this difficulty with Wilson about the rent?

(Objected to as immaterial and in the nature of a cross-examination.)

1071 Ans. I think I did see the sheriff there at that time.

Int. 131. Do you know whether you did or did not?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I think I must have seen him there, sir.

Int. 132. If you now mean to be understood that you did see the sheriff there, why do you answer the 128 int. by saying "if you saw any one, Mr. Pool was probably the one."

(Objected to for the same reasons as the 130 int.)

Ans. Because I think he was one of the deputy sheriffs.

Int. 133. Can you give any other answers to the question last put than the one you have given?

(Objected to for the same reasons as the 130th int.)

Ans. If I understand the interogatories I don't know as I can.

1072 Int. 134. State who now has the possession and control of this property known as Rose Bank.

(Objected to as immaterial.)

Ans. The deed or records shows it to belong to my son, and I have the control of it.

Int. 135. How long have you had such control?

(Objected to as immaterial.)

Ans. I think it since the spring of '62; I won't say for certain.

Int. 136. Did you get such control of Rose Bank before the execution of this deed you speak of, or after?

(Objected to as immaterial.)

Ans. If I remember right, it was about the same time.

Int. 137. Who leased, if you know, Rose Bank to Geo. Wilson the first year he occupied it, from March, '60, to March, '61?

(Objected to as immaterial.)

1073 Ans. I do not now recollect.

Int. 138. Did you not lease it to him for that term for the specified rent of $350?

(Objected to as leading & immaterial.)

Ans. I don't remember.

Int. 139. Did you lease or rent it to him for one year for the sum agreed on of $350 since the 1st day of March, 1859?

(Objected to for the same reasons as the last interogatory.)

Ans. My memory does not serve me well enough to swear whether I did or did not, at the present time.

Int. 140. State whether or not you rented or leased Rose Bank to George Wilson for one year from March, '61, to March, '62.

(Objected to as immaterial, and a useless repetition of previous questions.)

Ans. I could not posetively say.

Int. 141. Did you not rent or lease to George Wilson the farm
1074 known as Rose Bank for one year from some time in the spring of 1861 at the stipulated rent and price of $350, and did he not pay you, and did you not receive from him that amount as rent?

(Objected to for the same reasons as the last preceeding interogatory, and also as leading.)

Ans. I don't remember of having made Mr. Wilson a lease at that time; I have received some rent from Mr. Wilson.

Int. 142. How much rent have you received from him?

(Objected to as immaterial.)

Ans. The amount I do not remember.

Adjourned to 9 o'clock a. m. to-morrow, January 27th, 1864.

R. LINDERMAN, *Com'r.*

JANUARY 27—9 o'clock a. m.—Examination of the witness, J. A. Le Claire, resumed, pursuant to adjournment.

Int. 143. State the amount as near as you can.

1075 Ans. It must have been in the neighbourhood of $300; cannot say exactly.

Int. 144. State whether or not he settled with you for one year's rent of the farm.

(Objected to as leading & immaterial.)

Ans. I should think it was.

Int. 145. State if you can for what year.

(Objected to as immaterial.)

Ans. I do not exactly remember.

Int 146. How many years did Wilson occupy the farm after 1859?

(Objected to as immaterial.)

Ans. I do not now recollect whether it was one or two years.

Int. 147. How long was it before Wilson left the premises that you collected the rent mentioned by you?

(Objected to as immaterial.)

Ans. I do not recollect exactly; two or three months probably.

Int. 148. If Wilson was on the premises more than one year,
1076 then was the rent which he paid you for the first year or the second year that he occupied them?

(Objected to as immaterial.)

Ans. If he was on them for more than one year, I should think it was for the second year, but would not like to say positive.

Int. 149. You have stated in this your deposition that you went into the possession of Rose Bank in the spring of 1859, and had the possession or occupation of it for one year; now, after this possession or occupation did you at any time make a verbal agreement with Geo. Wilson by which you rented him the Rose Bank farm for one year for the sum of $350? If yea, state the time when such agreement was made.

(Objected to as immaterial, and [and] because the witness has not stated as represented in said question.)

Ans. I do not remember of having made any verbal agreement with Mr. Wilson, and do not remember how Mr. Wilson had possession of it.

Int. 150. You stated in substance in one of the foregoing answers
1077 that Rose Bank had been conveyed to your son by deed, and since the time of such conveyance you had had the control of Rose Bank; state as near as you can the time of the execution of that deed.

(Objected to as immaterial, and because the deed is the best evidence.)

Ans. It must have been, if I remember right, in 1862; about the first part of the year.

Int. 151. From whom was this deed to your son?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. From Geo. L. Davenport and wife.

Int. 152. Was this deed ever delivered to anybody after it was signed; and, if so, to whom?

(Objected to as immaterial.)

1078 Ans. I think it was delivered to me only.

Int. 153. Where is it now?

(Objected to as immaterial.)

Ans. At my house.

Int. 154. In whose possession and under whose control is it?

(Objected to as immaterial.)

Ans. I suppose as the father of this my son, it is in my possession and control.

Int. 155. At the time this deed was executed did your son pay any money or other consideration to Geo. L. Davenport for this deed? and, if he paid money, state how much, or if he gave any other consideration state what it was.

(Objected to as immaterial.)

Ans. I do not think he did, and know of no consideration that he could have paid for it.

Int. 156. What was the age of this son to whom the conveyance
1079 was made at the time it was made?

Ans. About five years.

Int. 157. What is his name?

Ans. Joseph A. Le'Claire.

Int. 158. Was this son of yours, at the time of this conveyance to him, living with you in your family or elsewhere?

(Objected to as immaterial.)

Ans. With me.

Int. 159. With whom has he since lived?

Ans. With me.

Int. 160. State, if you know, at whose request or under whose direction this deed was executed by Davenport & wife to your son.

(Objected to as immaterial.)

Ans. At mine.

Int. 161. Did any consideration pass from you to Davenport for
1080 this conveyance, or did you pay him any money therefor? and, if yea, state it.

(Objected to as immaterial.)

Ans. There was none.

Int. 162. Do you know whether or not Antoine Le Claire ever requested or directed Geo. L. Davenport to execute a deed of Rose Bank to you or to your son?

(Objected to as immaterial, & also as leading.)

Ans. I think he did, after having purchased it.

(Last part of answer objected to by comp't as not responsive.

Int. 163. Was such direction given immediately or shortly before the death of Antoine Le Claire? State the time as near as you can.

(Objected to as immaterial.)

Ans. It must have been before the death of Antoine Le Claire; I cannot state the time.

Int. 164. Did you hear any such request made?

(Objected to as immaterial.)

Ans. If I remember right, as agent of Antoine Le Claire, I done so myself.

1081 (This answer objected to by complainant as not responsive to the question.)

Int. 165. Did you hear Antoine Le Claire request or direct Geo. L. Davenport to execute a deed of Rose Bank to you or your son?

(Objected to as immaterial.)

Ans. I do not remember of hearing him request Mr. Davenport to do so.

Int. 166. Do you know of any other request on the part of Antoine Le Claire to Davenport to convey Rose Bank farm to you or your son, other than the request made by you as his agent, as stated in your answer to question 164?

(Objected to as immaterial.)

Ans. I think I heard him request his attorney, Mr. Putnam, to see Mr. Davenport about the matter.

Int. 167. When was that?

Ans. It was while he was living.

1082 Int. 169. Can you give any more direct or definite answer to the last question than the one just given?

(Objected to as immaterial.)

Ans. It was brobably within three months before his death, but am not positive.

Int. 170. Will you now state whether you ever heard Antoine Le Claire speak to his attorny Putnam, to see Davenport in regard to having Rose Bank conveyed to you or your child, before the time he was taken sick with his last illness?

(Objected to as immaterial, and also of the nature of a cross-examination of the witness.)

Ans. I think I did.

Int. 171. In answer to the last question you say you think you did. Can you now state that you recollect of his having so told Putnam?

(Objected to for the same reasons as the last preceeding interogatory.)

1083 Ans. I remember of a conversation, but cannot say positively that I do recollect of his having so told Putnam.

Int. 172. You say in your last answer that you remember a conversation. What conversation do you refer to; between what persons, and in regard to what?

(Objected to as immaterial.)

Ans. A business conversation between Antoine Le Claire and his attorney, on business matters, such as occured every day as a general thing.

Int. 173. What attorney do you speak of?

(Objected to as immaterial.)

Ans. Charles E. Putnam, the one refered to previously.

Int. 174. Do you now recollect any conversation between Le Claire and his attorney Putnam, in which Le Claire told or requested Putnam to see Davenport in regard to the conveyance of Rose Bank to you

1084 or your son? If you do, state as near as you can the time when and the place where it occurred.

(Objected to as immaterial.)

Ans. I cannot answer postively whether I heard such conversation, or the time; if I did so hear it, it was in Antoine Le Claire's office.

Int. 175. Do you now mean to be understood that you did or that you did not hear such a request from Antoine Le Claire to his attorney Putnam?

(Objected to as immaterial, and because the question has allready been repeatedly put and answered, and as in the nature of a cross-examination of the witness, which is not competent.)

Ans. I think I did.

Int. 176. Do you know, or do you recollect whether you did or not?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. Postively, I cannot say.

Int. 177. What makes you think you did?

(Objected to for the same reason as 175 int.)

1085 Ans. Business transactions.

Int. 178. Can you give any more definate answer to the last question? If you can, do so.

(Objected to for the same reasons as 175 int.)

Ans. I don't know as I can.

Int. 179. If Antoine Le Claire did not make such request to his attorney, then did any other person except yourself, to your knowledge, request Davenport to make the conveyance to your son?

(Objected to as immaterial, and because the question does not call for any fact, but puts a hypothetical case to the witness and asks what was the fact if such hypothesis were true, which is not a proper mode of examining a witness.)

Ans. Not to my knowledge.

Int. 180. When did you first request Davenport to convey it to your son?

(Objected to as immaterial.)

Ans. It must have been some time in the year 1861, what day or month I can't tell.

1086 Int. 181. Was it before or after the death of your uncle Antoine Le Claire?

(Objected to as immaterial.)

Ans. It was before.

Int. 182. About how long before? Before your uncle was taken sick, or after?

(Objected to as immaterial.)

Ans. I cannot say; it was before he was taken sick, but how long I cannot say.

Int. 183. Did Antoine Le Claire at any time request or direct you to see the defendant Davenport, in regard to the matter of having Rose Bank conveyed to you or to your son?

(Objected to as immaterial & leading.)

Ans. He did request me to see Mr. Davenport in relation to executing papers to the farm.

Int. 184. What papers do you refer to in your last answer?

(Objected to as immaterial.)

1087 Ans. I refer to the business papers that he and Mr. Davenport understood. What they were I don't know.

Int. 185. If you don't know what papers they were, can you say that his request to you had any reference to a deed of the premises?

(Objected to as immaterial.)

Ans. I think it had.

Int. 186. When was this request by Antoine Le Claire to you to call on Davenport to see about the execution of the papers in regard to Rose Bank. Was it during his last illness or before?

(Objected to as immaterial.)

Ans. It was, I think, in the summer of 1861. He never transacted any business after he was taken sick with his last illness.

Int. 187. How long before his death?

Ans. Probably two or three months.

Int. 188. In this request to you by Antoine Le Claire to see

1088 Davenport in regard to the execution of papers relative to Rose Bank, did he name or mention any particular kind of papers, either a deed, contract, lease, or other paper?

(Objected to as immaterial.)

Ans. No, sir; not that I remember of.

Int. 189. Did he request you to see Davenport and have a conveyance of the farm made by him to you or your son?

(Objected to as immaterial & also as leading.)

Ans. No, sir; I think not.

Int. 190. Did he tell you what papers he wanted you to get Davenport to execute? If he did, specify them.

(Objected to as immaterial, and because the question has allready been put and answered.)

Ans. I cannot say that he did any particular papers.

Int. 191. State whether or not you did call on Mr. Davenport, as requested by Mr. Le Claire?

(Objected to as immaterial.)

Ans. I think I did.

1089 Int. 192. Do you recollect whether you did or not?

(Objected to as immaterial.)

Ans. I guess I did, without any doubt. I generally done whatever he wished me to do.

Int. 193. Will you now state that you recollect of calling on Davenport as requested by Antoine Le Claire?

(Objected to as immaterial and because the question has allready been put and answered.)

Ans. I do not know as I recollect so as to answer more postively than I did before, but think I did call on him.

Int. 194. When and where did you call on him in regard to the matter?

(Objected to as immaterial.)

Ans. Some time in the summer of 1861. It is likely enough if any place, I met him on the street. I don't recollect whether it was in an office or where.

1090 Int. 195. State how long it was, if you called on him in reference to the matter, after Antoine Le Claire requested you to do so?

(Objected to as immaterial.)

Ans. At that time, or within a day or two.

Int. 196. Had you had any conversation with Antoine Le Claire about conveying Rose Bank to you or your son, before this time that he requested you to call on Mr. Davenport to make the conveyance?

(Objected to as immaterial.)

Ans. I had had several conversations with him about getting a farm; he spoke of purchasing this one for me, knowing that it was in market. I told him I would like to have it, or something to that effect.

(This answer is objected to by the complainant as not responsive to the question, as the question only called for, the fact as to whether there was any conversation on the subject, and not for the conversation itself.)

1091 Int. 197. When was it that Le Claire and you first conversed in regard to the purchase of Rose Bank?

Ans. If I remember it was in the summer of 1861; can't recollect now for certain.

Int. 198. How long before the time that he told you to go and see Davenport on the subject of the conveyance?

Ans. I do not now recollect, sir.

Int. 199. State the time as near as you can; whether it was one or two months, more or less.

Ans. I cannot say any time.

Int. 200. Had Antoine Le Claire, at any time prior to the occasion when he requested you to call on Davenport about the matter of conveying Rose Bank, made any agreement with you to convey the same to you or your son?

(Objected to as immaterial.)

1092 Ans. I don't remember. I know he made an arrangment that he was to purchase the farm, but whether it was prior to that I can't tell.

(To all that part of the answer after the word "remember" complainant objects as not responsive to the question.)

Int. 201. Was not there an agreement between you and Antoine Le Claire some time before his death, that he should convey to you Rose Bank farm in part payment of his indebtedness to you for services.

(Objected to as immaterial & leading.)

Ans. There was.

Int. 202. What was the amount of your claim against him for services?

(Objected to as immaterial.)

Ans. I do not now remember; no very specified amount. It was for services rendred and to be rendred.

Int. 203. Did Antoine Le Claire, in his lifetime, convey to you any real estate or promse any to be conveyed to you? and, if so, state

1093 what property he conveyed or caused to [to] be conveyed, and the time of said conveyance.

(Objected to as immaterial.)

Ans. Antoine Le Claire did convey to me some property during his lifetime; for instance, two lots in block 85, and also some property on 4th street,

the discription of which I can't give; it was one lot and a part of a lot; I think this was in 1860 or 1861; I can't tell exactly; the date of the conveyance of the two lots I do not remember.

Int. 204. Any other real estate conveyed to you by him, or that he procured to be conveyed to you?

(Objected to as immaterial, and grossly frivelous, and impertenant.)

Ans. None other, except what I have stated that I remember.

Int. 205. Was either of the peices of property, refered to and described in answer to question 203, known and described as the "Andrew & Shelly" property?

(Objected for the same reasons as the last preceeding int.)

1094 Ans. Yes, sir.

Int. 206. What was the consideration of the conveyance to you of the property known as the "Andrews & Shelly" property?

(Objected to for the same reasons as the 204 int.)

Ans. The consideration was for work or services had and to be had; the amount, I think, in the deed was put at $8,000 00.

Int. 207. On what street is this Andrews & Shelly property?

(Objected to for the same reasons as the 204 int.)

Ans. On the south side of 4th street.

Int. 208. What was the consideration of the conveyance by Antoine Le Claire to you of the two lots in block 85, refered to by you in your answer to question 203?

(Objected to for the same reasons as int. 204.)

Ans. None.

1095 Int. 209. Did Antoine Le Claire transfer to you any personal property as the consideration for services rendred by you for him?

(Objected to for the same reasons as int. 204.)

Ans. He did.

Int. 210. State what.

(Objected to for the same reason as int. 204.)

Ans. Money, and agreed to pay some of my indebtedness.

Int. 211. How much money?

(Objected to for the same reasons as to int. 204.)

Ans. I think $300.

Int. 212. What other property?

(Objected to for the same reasons as int. 204.)

Ans. He agreed to pay some of my indebtedness, to the amount of about $4,500, as near as I can recollect.

Int. 213. Was this agreement to pay your debts, mentioned in your last answer, a verbal or written agreement?

1096 (Objected to for the same reasons as to int. 204.)

Ans. Written.

Int. 214. Where is that agreement now?

(Objected to for the same reasons as int. 204.)

Ans. I do not know.

Int. 215. Was it delivered to you by Antoine Le Claire when it was executed?

(Objected to for the same reasons as int. 204.)

Ans. No, sir.

Int. 216. Was it delivered to any one by him; and, if so, to whom?

(Objected to for the same reasons as int. 204.)

Ans. I saw him deliver it to no one.

Int. 217. Have you ever had possession of it?

(Objected to for the same reasons as to int. 204.)

Ans. I think I never did, sir.

1097 Int. 218. Do you know of its being at any time in the possession of Dow & Brown, as your attorneys?

(Objected to for the same reasons as to int. 204.)

Ans. I cannot say that Dow & Brown ever had the contract.

Int. 219. Did you file before the county judge of Scott County a claim against the estate of Antoine Le Claire?

(Objected to for the same reasons as interogatory 204, and also because the record is the best evidence.)

Ans. Mr. Dow, my attorney, did file such a claim for me.

Int. 220. Were you present before the county judge on the hearing of that claim?

(Objected to for the same reasons as int. 204.)

Ans. I was.

Int. 221 Did not you or your attorney on that hearing produce and put in evidence before the county judge this agreement to pay

1098 your debts from Antoine Le Claire to you?

(Objected to for the same reasons as to int. 204.)

Ans. I did not; whether my attorney did or did not, I do not recollect.

Int. 222. Was not a portion of your claim against the estate of Antoine Le Claire based on that written agreement?

(Objected to for the same reasons as to int. 209, and also as leading.)

Ans. Yes, sir; if I understand the question.

Int. 223. Do you mean to be understood that Antoine Le Claire never delivered to you this written agreement, and that he never delivered it to any one for you?

(Objected to for the same reasons as int. 204, and also because the witness has already been asked, and has answered the same question.)

Ans. There was never a word passed between Antoine Le Claire and myself in regard to the agreement.

(This answer objected to by complainant as not responsive to the question.)

Int. 224. Interogatory 223 repeated.

1099 (Objected to for the same reasons as to int. 223.)

Ans. Not to my recollection.

Int. 225. Did you ever see this written agreement refered to?

(Objected to for the same reasons as int. 204.)

Ans. I did.

Int. 226. Where?

(Objected to for the same reasons as int. 204.)

Ans. I think in Mr. Putnam's law office.

Int. 227. When?

(Objected to for the same reasons int. 204.)

Ans. I cannot give the date; I saw it but once, and that was when I signed it.

(All that part of this answer after the word "date" objected to by complainant as not responsive to the question.)

Int. 228. Was any one present at the time you saw it? If so, who?

1100 (Objected to for the same reasons as to int. 204.)

Ans. Charles E. Putnam was there; & he was the only one, I think.

Int. 229. State who drew that agreement, if you know.

(Objected to for the same reasons as int. 204.)

Ans. I did.

Int. 230. Was Antoine Le Claire present when you saw the agreement?

(Objected to for the same reasons as to int. 204.)

Ans. I think not, as near as I can recollect.

Int. 231. State what was done with it, and who took it at the time you saw it in Putnam's office?

(Objected to for the same reasons as int. 204.)

Ans. I left it with Mr. Putnam.

Int. 232. Are you enabled to swear now positively that that instrument is not in your possession or under your control?

(Objected to for the same reasons as int. 204.)

1101 Ans. It is not in my possession, nor do I know where it is.

Int. 233. Have you ever seen it except on this occasion at Putnam's office?

(Objected to for the same reasons as int. 204.)

Ans. I think not.

Int. 234. Did this instrument or agreement from Le Claire to you, in which, as you state, he assumed to pay certain debts for you, contain also an agreement on the part of Le Claire to convey Rose Bank farm to you?

(Objected to for the same reasons as int. 204; also as leading, & because the writing is the best evidence.)

Ans. It did.

Int. 235. At the time you saw this agreement at Putnam's office, as stated by you, had it or had it not been signed by Antoine Le Claire?

Ans. It had.

Int. 236. About how long was that, as near as you are able to state, before the death of Antoine Le Claire?

1102 Ans. I don't think I could say near enough to make it an answer.

Int. 237. State, as near as you can, whether it was a week or a year before his death.

Ans. I am not able to say whether it was either.

Int. 238. State whether it was before or after Antoine Le Claire requested you to go and see Davenport about the conveyance of Rose Bank to you or your son, as stated by you.

Ans. Well, probably about that time; I am not posetive.

Int. 239. State the amount of Antoine Le Claire's indebtedness to you for services at the time of his death.

(Objected to for the same reasons as interogatory 204.)

Ans. Probably no specific amount could be arrived at; it might be somewhere in the neighborhood of $16,000 or $18,000, but it is hard for me to say any definate amount at this present time.

1103 Int. 240. Is your recollection as to the amount of Antoine Le Claire's indebtedness to you as distinct now as it was when your deposition was taken in this cause on the 24th day of March, 1863?

(Objected to as immaterial and an attempt to cross-examine the witness.)

Ans. I would judge not.

Int. 241. For the purpose of refreshing your recollection as to the amount of the indebtedness, I ask you, then, if you did not state in your deposition, taken on that day, (March 24th,) that Antoine Le Claire was indebted to you for services at the time of his death in the sum of $15,000?

(Objected to for the same reasons as the last interogatory, and also

because the deposition is in writing, and not produced or shown to the witness, and he cannot be asked to state its contents.)

Ans. I think in all probability I did.

Int. 242. What was the consideration of this written agreement
1104 of Antoine Le Claire on your part for the conveyance of Rose Bank to you?

(Objected to as immaterial, and because the writing is the best evidence.)

Ans. There was no definate or specific agreement about any one thing in the contract.

Int. 243. Can you give any more defenate answer to the last question?

Ans. I cannot, as I understand it.

Int. 244. Were not your services the consideration for which Antoine Le Claire, by his written agreement, agreed to convey Rose Bank to you as you have before stated?

(Objected to for the same reasons as int. 242, and as leading.)

Ans. On my part, my services were the consideration I agreed to in the agreement.

Int. 245. Was the agreement on the part of Le Claire executed for the purpose of paying you in part or in whole for your services.

1105 (Objected to for the same reasons as the last preceeding interogatory.)

Ans. I suppose it was for the whole of my services.

Int. 246. What is the reason, if you know, why Rose Bank was not conveyed to you pursuant to this agreement in the lifetime of Antoine Le Claire?

(Objected to as immaterial.)

Ans. I do not know.

Int. 247. Why was it conveyed to your son, if you know, after Le Claire's death?

(Objected to as immaterial.)

Ans. It was conveyed to him at my request and suggestion.

The further taking of these depositions is here adjourned until tomorrow, January 28th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Comm'r.*

JANUARY 28TH, 1864—9 *o'clock a. m.*

Examination of the witness J. A. Le Claire resumed pursuant to adjournment:

1106 Int. 248. Why did you not take that conveyance in your own name?

(Objected to as immaterial.)

Ans. For reasons best known to myself, and concerning no one but myself.

Int. 249. Have you any other answer to give, or will you make any other, than the one you have made to the last question?

(Objected to as immaterial.)

Ans. I have no answer to make wherein it would regard the parties concerned in this suit.

Int. 250. Do you refuse to state the reason why you requested and procured the conveyance of this Rose Bank to your son instead of to yourself?

(Objected to as immaterial, frivelous, and impertenant, and because the witness has already been fully questioned on the subject.)

Ans. I do not, if I can be forced to state my own private matters, in which I consider no one interested but myself.

1107 Int. 251. Will you or will you not now give the reason for having it conveyed to your son?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. For reasons that I was liable to pay debts in which I had no interest, and never had, and which I did not consider just for me to pay; and if I took the conveyance to myself the property would be liable to these debts, which I thought I ought not to pay.

Int. 252. State what reason, if any, you gave to Geo. L. Davenport why you desired this property to be conveyed to your son.

(Objected to as immaterial.)

Ans. None, that I remember.

Int. 253. Did Davenport, upon your simple request, without stating to him any reason why you wanted Rose Bank conveyed to your son, convey it to him?

(Objected to as immaterial, leading, and in the nature of a cross-examination of the witness.)

1108 Ans. I don't exactly remember; I think he did.

Int. 254. How long after you requested him to convey it before the conveyance was made?

(Objected to as immaterial.)

Ans. I am not able to tell at present; do not remember.

Int. 255. State whether it was only a short time or several weeks.

(Objected to as immaterial.)

Ans. I do not think it was a great long time, but how many weeks I don't remember.

Int. 256. State, if you know, who wrote that deed.

(Objected to as immaterial.)

Ans. I do not now recollect for a certainty, but think it was Mr. Putnam—Mr. Chas. E. Putnam.

Int. 257. Do you know whether this conveyance was a quitclaim deed or a deed of warrenty?

1109 (Objected to as immaterial and because the deed is the best evidence.)

Ans. I think a quitclaim.

Int. 258. When you called upon Davenport and requested him to convey Rose Bank to your son, did you request him to convey by any particular kind of deed, either warranty or quitclaim?

(Objected to as immaterial and as assuming what has not been proved.)

Ans. I think not.

Int. 259. Do you know why he executed a quitclaim instead of a warranty deed? and, if you do know, state the reason.

(Objected to as immaterial.)

Ans. I do not.

Int. 260. Was there any objections made by you at the time this deed was handed to you, for the reason that it was a quitclaim and not a warranty deed? and if any objection was made, state what it was.

(Objected to as immaterial, and as calling for declaration of the

1110 witness, which is not evidence against these defendants.)

Ans. I think not.

Int. 261. State who handed this deed to you.

(Objected to as immaterial.)

Ans. I do not now remember.

Int. 262. Had you any attorney in the matter, or did you act for yourself?

(Objected to as immaterial.)

Ans. I had an attorney, and acted for myself also.

Int. 263. State who was your attorney in the matter.

(Objected to as immaterial.)

Ans. George S. C. Dow.

Int. 264. Was there anything said by him, or did he give you any advise as to the kind of deed you should get from Davenport?

(Objected to as immaterial, and calling for declarations which are not evidence against these defendants, and calling for confidential
1111 communications between cliant and attorney, which are not admisable.)

Ans. I think we had some conversation about it, and concluded it was not of very material consequence which kind of deed I got, whether warranty or quitclaim.

Int. 265. Was this conversation between you & Mr. Dow, mentioned in your last answer, before or after the quitclaim deed had been executed by Davenport & wife?

(Objected to as immaterial, and because the conversation itself is not evidence.)

Ans. I cannot say, but was probably about the time the deed was executed.

Int. 266. State whether or not your attorney, Geo. S. C. Dow, undertook to execute, or did execute, to your son some kind of a writing or conveyance of these same premises known as Rose Bank.

(Objected to as immaterial, and because the writing, if any, is the best evidence.)

Ans. He executed a deed.

1112 Int. 267. What kind of a deed?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. A quitclaim, I think; I have it at home.

Int. 268. Was this before or after the deed of Davenport for the same premises to your son?

(Objected to for the same reasons as the 266 int.)

Ans. After.

Int. 269. How long after?

(Objected to for the same reasons as the 266 int.)

Ans. Six months or a year; I don't know which. It was quite a time after.

Int. 270. Was the deed of Dow to your son executed on the day it bears date, or was it dated back?

(Objected to as immaterial.)

Ans. I think about the time.

Int. 271. For the purpose of refreshing your recollection as to
1113 the date of deed from Dow to your son, I now ask you if the deed from Davenport to your son was not executed on the 20th day of January, 1862, and the deed from Dow to your son on the 1st day of February, 1862?

(Objected to as immaterial, leading, and because the deeds are the best evidence.)

Ans. Dates I cannot remember; therefore I am unable to tell.

Int. 272. Who first mentioned or suggested this conveyance from Dow to your son, you or Mr. Dow?

(Objected to as immaterial, and as calling for oral declaration not evidence against these defendants, or any of them.)

Ans. I do not now remember.

Int. 273. To whom was this deed, executed by Dow to your son, delivered?

(Objected to as immaterial, & relating to a transaction to which none of these defendants were parties, and which is not evidence against them.)

Ans. To me.

1114 Int. 274. Where is it now, and in whose possession?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. It is at my house; in my possession.

Int. 275. Was this deed executed to your son by Dow for the same reasons you assigned for having the Davenport deed executed to your son, or for other reasons? and, if for other reasons, state what they were.

(Objected to as immaterial, frivelous, and impertenant.)

Ans. Not for the same reasons particularly; but for reasons that at the end of the time for redemption of a sherriff's sale it would settle all troubles of my loosing the property as regards Capt. May or any one else. That I understood would be the effect of the deed.

Int. 276. How did you understand that it would settle all troubles, as stated in your last answer, if it was conveyed to your son, any more than if it was conveyed to you?

(Objected to because the [the] matter enquired about is totally irrelevant to this cause, and because the witnesses' understanding is

1115 not competent evidence.)

Ans. I don't know but it would have been all the same.

Int. 277. From whom, if from any one, did you understand that it would settle the troubles better by having the property conveyed to your son, as stated in answer to int. 275.)

(Objected to for the same reasons as the last preceeding interogatory, and also because the witness has not stated any such thing as the question implies.)

Ans. From enquiry from one or two attorneys.

Int. 278. Who were the attorneys?

(Objected to as immaterial.)

Ans. I think Mr. Dow was one. The other I cannot remember.

Int. 279. State whether any consideration was paid to Mr. Dow for this deed by your son or yourself; and, if so, state the amount of such consideration, and how it was paid, and whether by you or your son.

(Objected to as immaterial and relating to transaction between third parties, which is not evidence against these defendants.)

1116 Ans. I myself paid Mr. Dow in money the amount as called for in the deed, as near as I now remember.

Int. 280. Will you produce before the examiner, as exhibits, the deed from Geo. L. Davenport and wife to your son, and the deed from Geo. S. C. Dow to your son, that copies can be made thereof?

(Objected to as immaterial.)

Ans. Yes; I can do so.

Int. 281. Have you in your possession a copy or duplicate of the written agreement between yourself and Antoine Le Claire in respect to the conveyance of Rose Bank to you?

(Objected to as immaterial.)

Ans. I have not.

Int. 282. Do you know whether there is a copy of that instrument in the hands of your attorneys Dow & Brown.

(Objected to as immaterial.)

Ans. I am not able to say.

1117 Int. 283. Do you know whether they ever had a copy or not?

(Objected to as immaterial.)

Ans. I think they had; I cannot say positively.

Int. 284. State whether Dow & Brown, your attorneys, ever (to your knowledge) had possession of the original agreement; and, if so, when?

(Objected to as immaterial.)

Ans. I do not know whether they ever had.

Int. 285. You state in your answer to question 231, that you left this agreement with Mr. Putnam; state why you left it with him.

(Objected to as immaterial.)

Ans. I supposed he was a proper person to leave it with, if any reference to it was wanted.

Int. 286. Will you now produce the deed from George L. Davenport & wife to your son before the examiner?

(Objected to as immaterial.)

1118 Ans. I here produce it, and hand it to the examiner.

Int. 287. State in whose handwriting that deed is filled up, if you know.

(Objected to as immaterial.)

Ans. To swear to it, I could not; but judge it to be in Charles E. Putnam's.

Int. 288. State, if you know, when the interleniation in the deed, immediately above the line containing the signature of Geo. L. Davenport, was made.

(Objected to as immaterial.)

Ans. I do not know when it was made; as near as I can recollect, it was in the deed when it was first presented to me.

Int. 289. Can you state of your own knowledge, whether that interleniation was made before or after Davenport signed his name and acknowledged it?

(Objected to as immaterial.)

Ans. I cannot, sir.

(The said deed is here offered in evidence, and the original deed is annexed, marked Exhibit P.)

1119 Int. 290. Do you know whether or not this deed was executed by Davenport & wife to your son, in pursuance or fulfillment of Antoine Le Claire's written agreement with you, to convey the property therein described to you?

(Objected to as leading, and also as calling for an inference or a legal conclusion, and not any matter of fact.)

Ans. I think so, as far as Antoine Le Claire and I were concerned.

Int. 291. Are you enabled to say whether or not the discription of the land or property contained in this deed is a correct discription of the property known as "Rose Bank?"

Ans. I have examined the property discribed in the deed, on the map, and would judge it to be the same.

Int. 292. Will you now produce the deed you have mentioned as having been executed by George S. C. Dow to your son?

(Objected to because the said deed is irrelevant to the present suit, and not competent evidence therein.)

1120 Ans. I here produce said deed, and hand it to the examiner.

Int. 293. State in whose handwriting this deed is filled out, including the certificate of the notary.

(Objected to as immaterial.)

Ans. I would judge it to be Geo. S. C. Dow's.

Int. 294. Do you know when the erasures after the word "forever" in the 12th line were made? If you do, state.

(Objected to as immaterial.)

Ans. I think they were made at the time the deed was executed.

Int. 295. State whether or not at the time of the death of Antoine Le Claire, or shortly thereafter, you had in your possession notes and claims, or money, & certificates of deposite to a large amount, belonging to the estate of Antoine Le Claire, which you declined to [to] deliver to the executors of his estate, until George L. Davenport, or the executors of Antoine Le Claire, made a conveyance to you, or your
1121 son Jos. A. Le Claire, junior, of Rose Bank farm.

(Objected to as immaterial, and as leading.)

Ans. I had papers as stated; whether it could be called a large amount or not, I am not the judge; and had some such papers as late as April, 1862, which is some time after the deed bears date.

Int. 296. State what the amount was, as near as you can.

Ans. I do not recollect, nor can I at present give any amount.

Int. 297. For the purpose of refreshing your recollection, I ask you if you did not state——

(Question waived for the present.)

Int. 298. How did you get possession of these papers?

(Objected to as immaterial.)

Ans. I had charge of them during the time I was in the office of Antoine Le Claire; in his lifetime.

Int. 299. How; in your right, or as agent of L Claire?

1122 (Objected to as wholly immaterial to this case.)

Ans. I suppose as agent.

Int. 300. What was finally done with these papers; state whether or not you delivered them to the executors of Antoine Le Claire's estate; and, if so, when?

(Objected to as immaterial.)

Ans. I delivered them to the executors on several different times, prior to April, 1862, or about that time, and some of them at that time.

Int. 301. State what kind of papers these were; whether notes, or bonds, or other papers.

(Objected to as irrelevant to this case.)

Ans. Certificates of deposite, deeds of property, some notes; anything else, I do not now remember.

Int 302. Was there or not any money in your hands?

(Objected to as immaterial.)

There might have been; I do not now remember.

1123. Int. 303. Did the certificates of deposite, and the notes you so held, amount to more or less than $15,000?

(Objected to as immaterial.)

Ans. I am unable to state.

Int. 304. Did they amount to more or less than $5,000?

(Objected to as immaterial.)

Ans. I should think they did, to more than $5,000.

Int. 304½. Did they amount to more than $10,000?

(Objected to as irrelevant.)

Ans. I am unable to state; I cannot now recollect or call them to mind.

Int. 305. Why did you, after Antoine Le Claire's death, take and hold possession of these certificates of deposits, notes, and deeds, as stated by you?

(Objected to as immaterial.)

Ans. To protect myself; that is, my interest against the estate of Antoine Le Claire, and assist in procuring a settlement with the executors.

1124 Int. 306. Do you mean by your answer to the last question, when you say, "in procureing a settlement with the executors," a settlement with the executors of your claims against the estate of Antoine Le Claire, or the claims of persons generally?

(Objected to as immaterial.)

Ans. My own claims.

Int. 307. Did the executors or either of them, or any one in their behalf, ever call on you for these claims?

(Objected to as immaterial.)

Ans. I was asked for a memorandum of the property I held in my possession; whether it was by the executors or their attorneys, I do not now remember.

Int. 308. Did you furnish such memorandum?

(Objected to as immaterial.)

Ans. I think I did.

Int. 309. To whom?

(Objected to as immaterial.)

1125 Ans. I do not now remember.

Int. 310. Was it furnished either to one of the executors or to their attorney?

(Objected to as immaterial.)

Ans. To one or the other; I am unable to tell which.

Int. 311. If it was furnished to the attorney, and not to the executor, state who the attorney was to whom it was furnished.

(Objected to as immaterial.)

Ans. If it was to any one, as attorney, I think it was to Mr. Putnam; I won't say positive.

Int. 312. Did the executors or their attorney call on you more than once in regard to these certificates of deposits, notes, and deeds?

(Objected to as immaterial.)

Ans. I do not now remember.

Int. 313. Did they ever ask you to give them up at all to the executors?

(Objected to as immaterial.)

1126 Ans. I do not remember.

Int. 314. Did you ever tell them why you had taken them, and for what purpose you held them?

(Objected to as immaterial.)

Ans. It's more than likely.

Int. 315. You state that you took these notes, and certificates of deposits, & deeds, for the purpose of procuring a settlement of your claim with the executors against the estate of Antoine Le Claire. Did you keep them until you had effected such settlement; or did you surrender them up before?

(Objected to as immaterial.)

Ans. I think I settled with them in April, 1862, and then gave up the last papers I had belonging to the estate.

Int. 316. State which of these papers and instruments you have re-

fered to, if any, you surrendered before the date of this deed from Davenport & wife to your son.

(Objected to as immaterial, and also as leading.)

1127 Ans. I don't remember of having surrendered any.

Int. 317. Did you at any time, either before or after the execution of this deed by Davenport & wife to your son, execute any release or receipt to the executors of your claims against the estate of Antoine Le Claire.

(Objected to as immaterial.)

Ans. I do not remember.

Int. 318. Do you mean to say by your last answer that you don't remember that you did—or that you don't remember whether you did or not?

(Objected to as immaterial.)

Ans. I don't remember whether I did.

Int. 319. State as near as you can the time of your settlement with the executors.

(Objected to as immaterial.)

Ans. Within six months after the decease of Antoine L Claire.

Int. 320. Was that settlement a settlement in full of all your

1127 claims against the estate of Antoine Le Claire, or only of a part?

(Objected to as immaterial.)

Ans. I do not call it a settlement in full.

Int. 321. State what claims of yours against the estate of Antoine Le Claire were embraced and encluded in that settlement.

(Objected to as immaterial.)

Ans. What is represented here on the county judge's record, as near as I can recollect.

Int. 322. Did it or not embrace your claim against Le Claire for services rendered for him?

(Objected to as immaterial.)

Ans. I suppose so.

Int. 323. Did it or did it not embrace your claim against Antoine Le Claire, under his written agreement, to convey Rose Bank to you?

(Objected to as immaterial.)

Ans. It embraced what was in that agreement, which was the

1128 purchase of Rose Bank for me.

Int. 324. Who are the executors of the estate of Antoine Le Claire?

Ans. Marguerite Le Claire, (wife of Antoine Le Claire, deceased,) and George L. Davenport, esq.

Int. 325. Was this settlement which you made of your claim against the estate of Antoine Le Claire made with both the executors, or with one; and, if with one, which one?

(Objected to as immaterial.)

Ans. Mr. Dow, my attorney, was the one who conducted my business; I don't remember of ever enquiring of him whether it was one or both, or through their attorneys.

Int. 326. State in what way and how the executors of Antoine Le Claire settled and paid this claim of yours against the estate; whether in cash or in the conveyance of property, or otherwise, as stated by you.

(Objected to as immaterial, and as assuming what has not been proved, to wit, that the executors paid such claim at all, and as indeffinate

1129 and uncertain in not specifying the particular claim refered to.)

Ans. I know nothing of how the executors of Antoine Le Claire carry on their business.

(Answer objected to by complainant as not responsive to the question.)

Int. 327. You state that within six months after the death of Antoine Le Claire you made a settlement with the executors of the claim filed by you before the county judge, including your claim against Antoine Le Claire under his written agreement to convey or to purchase Rose Bank for you. On such settlement, or before, did you receive from the executors any payment of your claim, either in cash or notes, or the conveyance of property? and, if yea, state what you received from them either in whole or in part payment.

(Objected to as wholy irrelevant to this suit.)

Ans. I received money from the executors, but not at the time of this settlement. The forepart of this question I am unable to answer,
1130 as I do not fully understand it, and think it embraces a remark which I do not remember of having testified to.

Int. 328. You have stated that within six months of the death of Antoine Le Claire you settled the claim which you had against him, which had been filed before the county judge with his executors. Now, before or after the time of such settlement, did the executors pay you anything on that claim, either in money or notes, or by the conveyance of property or otherwise? And if they did pay you anything, state how and in what way the same was paid.

(Objected to as irrelevant.)

Ans. The only thing that I got within those six months was this deed from George L. Davenport and wife to my son. I have since then received money from the executors, all which, I suppose, was in settlement of that agreement.

1131 Int. 329. State as near as you can the amount that was found due to you on settlement with the executors from the estate of Antoine Le Claire.

(Objected to as irrelevant & immaterial.)

Ans. I am unable to state it, sir.

Adjourned to 9 o'clock a. m. to-morrow, January 29th, 1864.

R. LINDERMAN, *Com'r.*

JANUARY 29TH—9 *o'clock a. m.*

Examination resumed pursuant to adjournment:

Int. 330. State whether or not Antoine Le Claire kept a business office in the city of Davenport from the first of the year 1859 up to the time of his death.

Ans. I think he did.

Int. 331. Where was that office in the year 1859; on what street?

Ans. On Second street, in Le Claire Block.

Int. 332. Had the defendant George L. Davenport any office or place of business in the city of Davenport in the year 1859?

1132 Ans. I am not able to state.

Int. 333. Do you not recollect that Geo. L. Davenport was president or director of the State Bank, Davenport Branch?

Ans. I believe Mr. Davenport has been president of the Davenport Branch of the State Bank since its organization.

Int. 334. Was not his place of business at that bank in the year 1859?

Ans. I am unable to state.

Int. 335. How far was the building in which the State Bank did business in the year 1859, from the business office of Antoine Le Claire?

Ans. Within a block.

Int. 336. State whether or not Antoine Le Claire was a director in this bank at that time.

Ans. He was a director in the bank, but at what particular time I do not remember.

1133 Int. 337. Was he not a director from the time of its organization to the time of his death?

Ans. I believe not.

Int. 338. Was the defendant L. C. Dessaint a director in this bank or not?

Ans. Mr. Dessaint has been one of its directors.

Int. 339. Were the defendants Cook, or either of them, a director in this bank?

Ans. I am not able to say.

Int. 340. Were the personal and business relations between Antoine Le Claire and Geo. L. Davenport from the begining of the year 1859 up to the time of Le Claire's death intimate or otherwise?

(Objected to as leading.)

Ans. That is a question I do not feel competent to answer. One thing I can say, they always done business togather.

1134 Int. 341. Did you see Davenport at the office of Antoine Le Claire durring the years 1859 & 1860? and, if you did, state whether he was there frequently or only occasionally.

Ans. I did; many times.

Int. 342. Do you know of any business relations they had togather, except those pertaining to Rose Bank?

(Objected to because it does not appear that they had any business relations pertaining to Rose Bank.)

Ans. As near and as long as I can recollect, they have always had some kind of business togather from time to time.

Int. 343. Do you now recollect any particular business transaction between them, between the spring of 1859 and the time of Antoine Le Claire's death, except that relating to Rose Bank? If you do, name what it was.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I do not remember any particular business, but think
1135 they had some business togather, as they generally did, as near as I can recollect.

(All of this answer after the word "business," in first line, is objected to by complainant as not responsive to the question.)

Int. 344. Did you hear or learn of the fact at any time after the spring of 1859, that an agreement had been entered into between James May and Antoine Le Claire relating to a settlement between them, or to the exchange or conveyance of some real estate?

(Objected to as immaterial.)

Ans. Antoine Le Claire, I think, told me of having settled with Mr. May, and was in hopes that would be the last of his troubles and annoyance from May.

Int. 345. Was this said to you by Antoine Le Claire before or after the time when he told you that if you would go on and work Rose Bank that you might have the profits and what you could make of it, as you have stated?

(Objected to as immaterial.)

1136 Ans. I do not now remember; but think it was before.

Int. 346. State how near the place of business of the defendants Cook was to that of Antoine Le Claire, in the year 1859?

Ans. Within or about the distance of a block.

Int. 347. Do you know of there ever having been any business relations between the Cooks, or either of them, and Antoine Le Claire, since the begining of the year 1859?

Ans. Dates I cannot remember; but they have had business togather, but I cannot remember the dates.

Int. 348. State whether or not John P. Cook acted as the attorney for Mr. Le Claire.

Ans. John P. Cook has acted as such.

Int. 349. State, if you know, who acted as his attorney in the settlement between Le Claire & Capt. May, spoken of by you.

(Objected to because it assumes what does not appear, to wit,
1137 that anybody acted as his attorney in that settlement.

Ans. I do not consider myself competent, nor does my memory serve me well enough, to answer that question.

Int. 350. State whether in the year 1859 you saw Cook at the office of Antoine Le Claire; and, if so, whether once or more than once.

Ans. I should suppose I had seen him many times.

Int. 351. Was your place of business as business agent of Antoine Le Claire in the same office with Antoine Le Claire, or had you a seperate one?

Ans. In the same.

Int. 252. Do you recollect now of hearing any conversation between Antoine Le Claire & John P. Cook, at the office of Mr. Le Claire, in the year 1859, in regard to this agreement of settlement between Mr. Le Claire and Capt. May, in which any advise about the conveyance of Rose Bank was given?

1138 (Objected to because the question requires the witness to give the character of the conversation referd to without giving the conversation itself, which alone is competent, and also because it enquires about confidential communications between cliant and attorney.)

Ans. I do not remember of ever hearing any such conversation.

Int. 353. Do you recollect, in 1859, of hearing conversations between Cook & Le Claire, in regard to any matters in which Cook was acting as the attorney of Mr. Le Claire?

(Objected to for the same reason as the last preceeding interogatory; and also because it does not state the specific subject of the conversation enquired about.)

Ans. I may and may not have; I do not feel able to answer the question.

Int. 354. Why do you not feel able to answer it?

Ans. Because my memory does not serve me well enough; that is, my recollection is not good enough.

1139 Int. 355. Did you, as the business agent of Antoine Le Claire, at any time, have any conversation with John P. Cook, as the attorney of Antoine Le Claire, in regard to Rose Bank?

Ans. I do not recollect.

Int. 356. Do you know whether or not Antoine Le Claire, in the request or direction which he told you to communicate to George L. Davenport to convey Rose Bank as stated by you, acted under the advise of any one, or whether this was done merely at his own suggestion?

(Objected to because the witness has not stated any such matters as are set fourth in the question as stated by him; and further because it requires the witness to state whether Antoine Le Claire acted under the advise of any one, without enquiring whether any one gave such advise; and, if so, what it was, which is not a proper mode of examining a witness.)

Ans. I do not know, sir.

Int. 357. State whether or not, in 1859, to your knowledge,
1140 George L. Davenport loaned to Antoine Le Claire any money.

(Objected to as immaterial.)

Ans. I do not know as he did.

Int. 358. State whether or not, to your knowledge, during that same year, the firm of Cook & Sargent loaned to Antoine Le Claire any money.

(Objected to as immaterial.)

Ans. I do not remember.)

Int. 359. Did Antoine Le Claire, in the year 1859 and prior thereto, endorse paper for Cook & Sargent to a large amount?

(Objected to as immaterial, leading, and because the paper is the best evidence.)

Ans. I think he did.

Int. 360. State whether or not Le Claire was also in 1859, and prior thereto, an accommodation endorser for the defendant Geo. L. Davenport.

(Objected to for the same reason as the last preceding question.)

Ans. I know of Antoine Le Claire's having been an endorser
1141 for George L. Davenport. The date I am unable to state.

Int. 361. Were his endorsements for Davenport, as stated in your last answer, before or after the time when he requested or directed you to see Davenport in regard to the conveyance of Rose Bank, as you have stated?

(Objected to as immaterial.)

Ans. I am unable to answer; do not recollect.

Int. 362. Do you know of Antoine Le Claire's making a loan of money to the defendant Dessaint, or of his borrowing money from Dessaint? and, if so, state when.

Ans. Antoine Le Claire never loaned to Dessaint money, to my knowledge, but, on the contrary, had borrowed money from him for two or three, and maybe four years, previous to his death.

Int. 363. State what you know, if anything, in relation to a deed made out and signed by Antoine Le Claire during his lifetime, for the conveyof Rose Bank to your son, or to one or more of your children.

1142 Ans. I generally made out Antoine Le Claire's deeds, and acknowledge the same; that is, took the acknowledgements, but never saw or heard of this instrument refered to.

(All that portion of this answer, except the last paragraph, objected to by the complainant as not responsive to the question.)

Int. 364. State what you know, if anything, in regard to any advise given to Antoine Le Claire by his attorneys, or either of them, respecting Rose Bank, or the conveyance thereof.

Ans. I don't know of any,

Int. 365. Were you present at the sale of Rose Bank by Charles Powers, under a deed of trust, in July, 1859?

Ans. I was present at a sale made by Mr. Powers, of Rose Bank. The date I don't know.

Int. 366. Where was the sale made?

Ans. Here, at the court-house door, in Davenport, Scott County, Iowa.

1143 Int. 367. Did you arrive at the place of sale before Powers opened the sale, or after?

Ans. Before.

Int. 368. Was Powers at the court-house when you got there, or did he come afterwards?

Ans. I do not recollect.

Int. 369. Give the names of the persons you saw at the sale.

Ans. I don't know as I remember of all that were here, or took notice to them. I believe L. C. Dessaint, the purchaser of that property, John P. Cook, G. C. R. Mitchell, Capt. May, I think I saw there. Those are all I can recollect now.

Int. 370. Did you see R. D. Congdon there?

Ans. I do not recollect of seeing him.

Int. 371. Did you see John T. King there?

Ans. I believe I did.

Int. 372. Did you see Capt. May, the complainant, there?

1144 Ans. If I remember right, I saw Capt. May around.

Int. 373. Did you see Capt. May in the court-house, or within the court-house yard, on the day of the sale?

(Objected to because the witness has allready answered the question, and a renewal of it in this form is an obvious attempt to lead him.)

Ans. If my recollection is right, I saw him a good many times that day, and think I saw him in or about the court-house.

Int. 374. Will you now state that you saw him at the court-house at any time during the sale?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I cannot answer postively.

Int. 375. Is your recollection in regard to seeing Capt. May at the sale as distinct as in relation to other matters stated by you in this deposition?

1145 (Objected to for the same reasons as the 373 interogatory, and as an attempt to cross-examine the witness.)

Ans. Not so much so, probably, as I was setting talking to other parties on the porch a half hour probably before the property was sold.

Int. 376. Was John P. Cook at the sale when you got there?

Ans. I don't remember.

Int. 377. Do you know how John P. Cook came to the sale on that day, whether on foot or horseback or in a carriage?

Ans. I am not able to state.

Int. 378. Do you know whether he came to the sale with any one? and, if so, state who.

Ans. I do not.

Int. 379. Did the trustee, Powers, before the sale, state the terms of the sale?

1146 Ans. He read the advertisement, if I rightly remember, offered the property for sale, and I think offered a part first; I don't remember whether he stated the terms of the sale, unless it was embodied in the advertisement.

(The first part of this answer objected to by complainant as not responsive to the question.)

Int. 380. Did he state whether or not it would bee sold for cash, or on credit, before he opened the sale?

Ans. I do not remember.

Int. 381. Did he state whether the property must be paid for by the purchaser?

Ans. I don't remember.

Int. 382. For what purpose did you go to the sale?

1147 Ans. No particular purpose.

Int. 383. Why then did you go?

Ans. Because I felt so inclined.

Int. 384. Did you go to the sale for the purpose of bidding or not? (Objected to as immaterial.)

Ans. I was there, and had there been no bidders, and the property went for little or nothing, I should have purchased it, as I am always looking out for chances of that kind.

Int. 385. Did you bid on the property?

Ans. I think not, if I remember rightly.

Int. 386. State who did make bids.

Ans. Dissaint, the purchaser; I believe Judge Mitchell; those are the only two that I remember of.

1148 Int. 387. What was the amount of Mitchell's bid?

Ans. I don't recollect the amount.

Int. 388. Was the farm sold as a whole by the trustee, or was it sold in parcels to the purchaser?

Ans. I think it was knocked off in a body.

Int. 389. Did the trustee expose or offer for sale any seperate piece or parcil of this farm; if it did, describe such seperate piece or parcel.

Ans. I think he did. The discription I do not recollect.

Int. 390. How long was it from the time this sale opened until it closed about?

Ans. Mr. Powers was here nearly an hour before the property was knocked off, but how long he was crying it off, I could not state.

Int. 391. Did you leave the court-house before or after Powers did, or about the time?

Ans. I don't know. I left after the sale was over.

1149 Int. 392. Do you know whether the sale of Rose Bank by the trustee, & the purchase of the same by Dessaint, was made known to Antoine Le Claire; and, if so, by whom?

Ans. I believe I told him.

Int. 393. How long after the sale?

Ans. I don't recollect whether it was that day or not. It was probably within a short time.

Int. 394. From whom or how did you learn that this sale was to take place?

Ans. I saw the same published in a newspaper.

Int. 395. Do you recollect what newspaper?

Ans. Not exactly. I take both papers, but don't remember which one it was in.

Int. 396. At the time you saw this notice of sale, were you acting as the business agent of Antoine Le Claire?

Ans. I was.

1150 Int. 397. How long before the sale was it, as near as you can state, that you saw this notice of sale in the newspaper?

Ans. More than likely I saw it on the day it was first published. It is generally 30 days before a sale that property is advertized.

Int. 398. Was the paper you saw this notice of sale published in a paper published in the city of Davenport or elsewhere?

Ans. In Davenport, if I remember rightly; I am sure it was.

Int. 399. State whether or not, after you saw this notice of sale in the newspaper, you, as the business agent of Antoine Le Claire, communicated to him the fact that Rose Bank was advertized for sale? (Objected to because the question is immaterial, and because it is leading, and asking the witness whether he communicated it in a particular capacity.)

Ans. I think not.

1151 Int. 400. Had he any knowledge of the sale, so far as you know?

(Objected to as not calling for any fact, but the inference or conclusion of the witness.)

Ans. I do not know.

Int. 401. Do you mean to be understood that you, acting as the business agent of Antoine Le Claire, had knowledge that Rose Bank was advertized for sale, being the same property which he, for three, four, or five months before had told you you might have the use of for the year, and make whatever you could out of it, and yet neglected to communicate the fact, that it was advertized for sale, to him?

(Objected to as an attempt to argue with and cross-examine the witness for the obvious purpose of inducing him to change his former answer, which is wholly improper on a direct examination.)

Ans. I mean to be understood as I have answered, and did not
1152 consider the thing of importance enough to make any note of it.

Int. 402. Can you or will you give any more explicit answer to the last question than that you have just given?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I don't know or recollect of anything by which I could.

Int. 403. Did Antoine Le Claire, at this time, take the paper in which this notice was published or not?

(Objected to as immaterial.)

Ans. I cannot answer for certain; I was not living with him.

Int. 404. Did you, at any time, have any conversation with the defendant John P. Cook, or either of the other def'ts, in regard to the sale of Rose Bank by Powers, either before or after it had taken place?

Ans. I may have had; likely I did.

Int. 405. Do you recollect with which of them you had such con-
1153 versation.

Ans. I do not now remember; probably with all of them.

(The deed from George S. C. Dow and wife to Joseph A. Le Claire, jr., heretofore produced by this witness, is here offered as an exhibit, and is attached to these depositions marked Exhibit "Q."

This exhibit objected to by def'ts' solicitor as totally irrelevant to this case.)

Int. 406. Had you, prior to the time you drew the written agreement between you and Antoine Le Claire, and which you say you left with Chas. E. Putnam, any conversation with Antoine Le Claire about making any such agreement?

Ans. I think not.

Int. 407. How came you to draw it then?

(Objected to as immaterial, and because the witnesses' reasons are not evidence against these defendents.)

1154 Ans. For reasons of my own interest and future prosperity.

Int. 408. Had you any reason to believe or suppose that Antoine Le Claire would sign it if you drew it?

Ans. I had reasons to believe that if he (Antoine Le Claire) desired my services, he would enter into some agreement by which I would receive pay, or by which I would know what I would get.

Int. 409. Had you any reason to believe that he would sign this agreement?

(Objected to as not calling for any fact within the witnesses' knowledge, but only for his reasonings or beliefs, or both.)

Ans. I don't know as I had.

Int. 410. How long had you drawn this agreement before the time you left it with Mr. Putnam?

Ans. I don't recollect; not a great while.

1155 Int. 411. Were you present when Antoine Le Claire signed it?

Ans. I believe not.

Int. 412. Do you know where it was when he signed it?

Ans. I do not remember that I know.

Int. 413. Did he sign it before or after you left it with Mr. Putnam?

Ans. It was signed when I left it with Mr. Putnam.

Int. 414. Do you mean it was signed by him (Le Claire) at the time you left it there or before?

Ans. I diden't see Antoine Le Claire in Mr. Putnam's office at the time I left the paper there. It was allready signed, as I now recollect.

Int. 415. From whom did you get this agreement after it was signed by Mr. Le Claire, and before you took it to Mr. Putnam?

(Objected to as immaterial.)

1156 Ans. I don't remember of saying I took it to Mr. Putnam myself, after it was signed by Antoine Le Claire.

Int. 416. For the purpose of refreshing your recollection, I now ask you if you have not stated that it was signed by Antoine Le Claire when you left it with Mr. Putnam?

(Objected to as immaterial, and because the complainant is not entitled to cross-examine, and also because this deposition is the best evidence whether he has so stated.)

Ans. I so stated.

Int. 417. Will you now state who did take that agreement to Mr. Putnam?

(Objected to as immaterial.)

Ans. I wrote the agreement; left it with Mr. Putnam before there was any signatures to it.

Int. 418. How long after you left it with Putnam, as stated by you in your last answer, before you signed it?

(Objected to as immaterial.)

1157 Ans. I answered to interogatory 417 that there was no signatures to the agreement when it was left by me with Mr. Putnam; but now think my name was to it at that time.

Int. 419. You state in your answer to question 235, that at the time you saw this agreement at Mr. Putnam's office, it had been signed by Antoine Le Claire. And you say in answer to anothers interogatory, that you were not present when Antoine Le Claire signed it. Now, state if you know when and where Antoine Le Claire did sign it.

(Objected to because the writing is the best evidence, and the execution of the agreement cannot be proved until it is produced.)

Ans. I don't know, as I was not present.

Int. 420. Will you now state whether it had or had not been signed by him when you took it to the office of Mr. Putnam?

1158 (Objected to as immaterial, and also for the same reasons as the last preceeding interogatory.)

Ans. I wrote the agreement and took it to Mr. Putnam's office. At that time Antoine Le Claire's name was not on it.

Int. 421. Was it signed by you at that time, when you left it at Putnam's office, as stated by you in your last answer?

(Objected to for the same reasons as the last preceeding question, and also because the question has already been put and answered.)

Ans. Yes, sir; I think it was.

Int. 422. Did you see this instrument after you took it to Putnam's, as stated by you in your answer to the 420th interogatory?

(Objected to as immaterial.)

Ans. I did.

Int. 423. When and where?

Ans. I saw it at Mr. Putnam's office, a short time after I had left it there.

1159 Int. 424. When you saw it the second time at Putnam's office, had it been signed by Antoine Le Claire?

(Objected to for the same reasons as int. 419.)

Ans. It had.

Int. 425. Why did you leave it with Mr. Putnam, after you had signed it, and before Mr. Le Claire had?

(Objected to as irrelevant, and because the witnesses' reasons or motives are not evidense against these defendants.

Ans. For the purpose of Mr. Putnam's ascertaining for me whether Antoine Le Claire was willing to enter into such an agreement.

Int. 426. Did you ever hear any conversation between Antoine Le Claire and George L. Davenport in relation to the conveyance of Rose Bank farm to you or your son? I do not enquire what the conversation was, but simply whether you heard any conversation between them on that subject?

(Objected to because complainant has no right to enquire whether the witness heard conversation on that subject between said parties,

1160 without enquiring what the conversation was.)

Answer. I do not recollect of hearing such particular conversation.

Int. 427. Was there any written agreement or instrument executed, to your knowledge, by & between Antoine Le Claire & Geo. L. Davenport, or by either of them to the other, in regard to the conveyance of Rose Bank to you or your son? If there was, state what kind of an agreement or instrument it was.

(Objected to because the writing itself, if any, is the best evidence of its own character & contents.

Answer. There was not, to my knowledge.

Int. 428. You say in answer to int. 288 that the interleniation enquired about in the deed from Geo. L. Davenport & wife to your son, was in the deed when it was firs presented to you; who first presented the deed to you?

(Objected to as immaterial.)

Answer. I do not remember whether it was Mr. Putnam or Mr. Dow.

Int. 429. State whether or not, about the year 1856 or 1857, or before that, Antoine Le Claire furnished you several thousand dollars

1161 with which you opened a hardware or iron store in Davenport?

(Objected to as grossly frivolous & impertinant.

Answer. I believe I borrowed $2,500 from Antoine Le Claire, or rather he furnished that amount in goods for the purpose of engaging me in business in an iron store.

Int. 430. Do you know or can you set forth any other matter or thing that may be of benefit or advantage to the parties in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Answer. I do not understand the nature of the interrogatory, and therefore I am unable to make any answer.

1162 Int. 431. Interogatory 430 repeated.

Ans. I answer the same as I did before.
Int. 432. Interogatory 430 again repeated.
Ans. At this moment I do not know as I could state anything.
J. A. LE CLAIRE.

The further taking of these depositions is here adjourned until the 22d day of February, A. D. 1864, at 9 o'clock a. m. of that day.
R. LINDERMAN, *Com'r.*

Cross-interrogatories No. 1 to No. 72.

The examination of the witness J. A. Le Claire resumed the 20th day of February, A. D. 1864, pursuant to stipulation of parties.
The following cross-interogations are propounded by defendents' solicitor without waiving any objections to the taking of these depositions or any of them, or the examination of this witness, but expressly reserving the same:

C. int. 1. In your direct examination you speak of having taken
1162 possession of the farm styled Rose Bank, in the spring of 1859, and having had the control of it subsequently thereto. Did you manage the said farm for your own benefit of that of some other party?
Ans. My own benefit.
Cross-int. 2. Did Antoine Le Claire ever receive any part of the rents or profits of said farm; if so, how much, and when?
Ans. He never did, to my knowledge.
Cross-int. 3. What, if anything, did Antoine Le Claire have to do with the control or management of said farm at any time subsequent to the spring of 1859?
Ans. None that I know of.
Cross-int. 4. In your answer to the 84th direct interogatory, you say that you retained possession of said farm, after you took said possession in the spring of 1859. If you are not mistaken about a year, please to state particularly, to what extent & in what way you had posses-
1163 sion of the same during said year, and especially after July, 1859.
Ans. I mearley had the farm to put in the crop and make what I could out of it. After the sale in July, 1859, all I had to do with it was to get my crops off.
Cross-int. 5. What sale do you refer to in your last answer?
Ans. To the sale made by Mr. Powers as trustee, selling this Rose Bank farm.
Cross-int. 6. Where you ever in the personal occupation of said farm prior to November, 1862?
Ans. No, sir; not if you mean by personal occupation, living there & working there.
6½. Do you know of anybody's assuming any control of said farm or exercising any acts of ownership thereon in 1859, and after the sale thereof by Powers under the trust deed? If so, state who it was, and state particularly what control he assumed and what acts of ownership he exercised, and when.

Ans. Mr. Dessaint I believe purchased the farm; came there
1164 and made repairs, worked at fixing up the place, fixing the fence, trimming the srubery, &c., and I don't know but what he fixed the house some; this was a short time after the sale by Powers.
7th. Do you mean by Dessaint, in your last answer, Louis C. Dessaint,

the defendent herein? If yea, was he personally present at and upon said farm overseeing and directing said repairs and improvements?

Ans. I do mean the said defendent, and I think he was personally present and directing said repairs.

8th. By whom was the work done in making said repairs and improvments?

Ans. I believe he was there himself and had a hired man.

9th. Who employed the said hired man refered to in your last answer?

Ans. I do not know.

10th. Under whose supervision and direction did he work on said premises?

1165 Ans. I supposed him to be under L. C. Dessaint's.

11th. Did either you or Antoine Le Claire have anything to do, directly or indirectly, with the said work and repairs, either in procuring the same to be done, overseeing or directing the same, paying or furnishing means of paying therefor, or in any other way; if so, what?

Ans. Nothing of any kind whatever.

12th. Do you know of anything done by said Dessaint at or about said time, in referance to further improvment proposed to be made by him upon said premises; if so, what?

(Objected to as immaterial.)

Ans. I heard him express his ideas about the change he would make in the house in fixing it up.

13th. When and where did this conversation occur?

Ans. I do not remember where it was; whether it was on the place or when I met him. It was some time after he had purchased it.

1166 14th. State whether it was while he was carrying on the repairs and improvements on the place which you have already mentioned.

Ans. I think it was.

15th. State what it was that you heard Dessaint say at that time in reference to fixing up the house, as stated in your answer to the 13th cross-interrogatory.

(Objected to as immaterial and irrelevant.)

Ans. It was in the alteration in the front of the house, by which there would be a large room up-stairs in the front. The object in making the improvment was to give it a show from the Harrisson-street road.

16th. What did said Dessaint say about said improvment or alteration, or in what way did he speak about it; whether as recomending, advising the same to be made, intending or proposing to make it himself, or otherwise? State as particularly as you can.

(Objected to for the same reasons as the last preceeding int.)

1167 Ans. He spoke as a man to whom the property belonged, and giving his ideas about the improvments he would make about the premises. I cannot give the language exactly, but he spoke of it as one friend would to another.

17th. Do you know of said Dessaint's procuring or taking any steps to procure a plan to be drawn for such proposed alteration in the house?

(Objected to for the same reasons as the 15th int.)

Ans. I do not, sir.

18th. After the removal by you of the crops from said farm for the season of 1859, what interest in or control over the said farm, if any, had you?

Ans. None.

19th. You speak in your direct examination of having placed one

Dennis Navin upon said farm as tenent. State, if you know, how long the said Navin remained on the said farm.

Ans. I think it was ten or eleven months, as near as I remember.

1168 20th. Did he pay you any pecuniary rent? If so, how much and when?

(Objected to as immaterial.)

Ans. He did not.

21st. Did you furnish him with teams or other means or facilities for doing any work on the premises, except for the purpose of attending to and gathering the crops then in the ground, after the sale of the farm under the trust deed by Powers; if so, what?

(Objected to as immaterial.)

Ans. I did not; I furnished him nothing.

22nd. In your direct examination you speak of a written agreement between yourself and Antoine Le Claire, by which he agreed to convey to you the said farm, which agreement you state was drawn by yourself. Will you state, if you recollect, what was the character or form of said writing as drawn by you and before signatures; whether the same was in the form of a contract or agreement by said Antoine Le Claire, or in some other form or shape; and, if so, what?

1169 (Objected to for the reason that the writing itself is the best evidence.)

Ans. It was in the form of a contract by which I agreed to do certain things in consideration of the conveying to me of this farm and some other property; and it was in the form of a contract.

Int. 23d. Was it not rather in the form of a proposal or offer on your part to Antoine Le Claire; and did it, as drawn by you, contain any language by which Antoine Le Claire purported to bind or obligate himself to you?

(Objected to as leading & suggesting the answer to be given.)

Ans. It was in the form of an offer, and did contain language binding Antoine Le Claire to me.

24th. Will you state such language binding Antoine Le Claire to you, or the substance thereof, as nearly as you can recollect the same?

Ans. I can't give the words exactly, but in substance; for my

1170 services he was to pay certain indebtedness of mine, and deed certain property to me.

25th. In your answer to the 315th direct interogatory, you speak of having settled your claim against the estate of Antoine Le Claire with his executors in April, 1862. Do you mean by that, that you obtained the payment of your claim or an adjustment of the same?

Ans. An adjustment, I suppose it was. It was before the county court. It was not a payment.

26th. Was your claim brought regularly to trial before the county court, and decided by the court?

(Objected to as immaterial, and because the record is the best evidence.)

Ans. It was.

27th. State whether the same or any part thereof was resisted by the executors before the county court?

(Objected to as immaterial, and because the record is the best evidence.)

Ans. It was; some of it.

1171 28th. In your answer to the 344th direct interogatory, you say "Antoine Le Claire, I think, told me of having settled with Mr. May, and was in hopes that would be the last of his troubles and annoy-

ance from May." Did said Le Claire, in said conversation, say anything further about said May or his said settlement; if so, what?

Ans. He stated that he was not indebted [ed] to May, but, on the contrary, May was in his debt; but that May had been continually harrassing and persecuting him, and that he did not know how to get rid of him, and that that was the cause of this settlement (or whatever it was) between them.

Int. 29. In your answer to the 359th direct interogatory, you say that "you think Antoine Le Claire did, in the year 1859, and prior thereto, endorse paper for Cook & Sargent to a large amount;" state whether such endorsments were made for a valuable consideration or for the accomodation of Cook & Sargent; and state what consideration, if any, Antoine Le Claire received therefore.

(Objected to as immaterial.)

1172 Ans. Mearly for accomodation, as I understood it; and I know of no consideration that he received for endorsing their paper.

Int. 36. You have spoken in your direct examination about loans made by Louis C. Dessaint to Antoine Le Claire; state in what amounts said loans were made, and how often.

Ans. The amounts, I could not tell exactly; they ranged from two thousand to three thousand; the aggregate of the loans amounted to perhaps $6,000; the highest note he ever gave was $3,000.

Int. 31. State, as near as you can, the time when the first of these loans was made.

Ans. Some time, I think, in the year 1858.

Int. 32. Do you know the purposes to which the money so borrowed by Le Claire of Dessaint was applied? If so, state the same.

1173 Ans. I do. The most of it went to pay interest on the Cook & Sargent liabilities; some may have been to pay taxes.

Int. 33. Explain what you mean in your last answer by the Cook & Sargent liabilities.

Ans. I mean the notes of Cook & Sargent endorsed by Antoine Le Claire, which he was obliged to pay on their failure.

Int. 34. State, if you know, whether any part of the money borrowed by Le Claire of Dessaint was applied to pay for the said Rose Bank farm, or to pay off any incumbrance thereon, or to any purpose having any connection with or referance to said farm; if so, state how much was so applied, and when.

Ans. None, to my knowledge, or that I ever heard of.

Int. 35. State the degree of your familiarity with the money transaction of Antoine Le Claire, and whether or not you knew of the

1174 several times when said moneys were borrowed of Dessaint, the respective purposes for which they were borrowed, and to which they were applied?

Ans. I done all the business of Antoine Le Claire in regard to borrowing money or transacting any business pertaining to money, and made the arrangements myself with Mr. Dessaint for these loans, and then knew the amount of money borrowed, and the purposes for which it was used, and was consulted in regard to all the money matters wherein Antoine Le Claire was interested, and all his business of that kind was done by me.

Int. 36. Are you able or not to state positively whether or not any of the said money borrowed by Le Claire of Dessaint were borrowed or used for any purpose relating to said Rose Bank farm?

Ans. I think I am postive that there never was a dollar of it used for that purpose, or borrowed for that purpose.

1175 Int. 37. You state in your direct examination that you attended the sale of said farm by Powers under the trust deed. Did you or not attend said sale as the agent or on behalf of Antoine Le Claire, or at his instance or request?

Ans. I did not.

Int. 38. What, if anything, did you do for the purpose of bringing about said sale, or of consumating the same?

Ans. Nothing.

Int. 39. State whether or not Antoine Le Claire, to your knowledge, did anything, either directly or indirectly, either in person or through the agency of others, to procure said farm to be sold by Powers under said trust deed; and, if yea, state what.

Ans. He done nothing of the kind, to my knowledge.

1176 Int. 40. State whether or not you know of any plan, scheme, or combination between said Antoine Le Claire and any of the others defendents in this suit, or between any of said def'ts other than said Le Claire, to procure said farm to be sold under said trust deed, for the purpose of preventing said May from fulfilling his agreement with said Le Claire, or for any purpose.

Ans. I know of no such plan, scheme, or combination for any such purpose.

Int. 41. At or about the time of said sale, what knowledge or information had you, if any, that said Antoine Le Claire had any concern or interest in said sale, or that the same was made or to be made in any way for his benifit, or to promote his interest?

(Objected to as calling for hearsay.)

Ans. I had no knowledge or information that Antoine Le Claire had any such concern or interest, or that he would be benefited by that sale.

Int. 42. Do you know of any arrangement having been made

1177 that the said farm should be bid in at said sale, either by said Dessaint, or any other person, for said Antoine Le Claire, or that it should be held by the purchaser for his benefit, or in trust for him? If so, state the same.

Ans. I do not know of any such arrangment.

Int. 43. Where you, at or about the time of said sale, informed, or did you then understand, that any such arrangment as that stated in the last preceeding interogatory, existed?

(Objected to as calling for hearsay evidence; and also as calling for the witnesses' understanding of the matters, and not for facts.)

Ans. I knew of no such arrangment.

Int. 44. Were you at or about that time informed of any such arrangment?

(Objected to for the same reasons as the last preceding interogatory.)

Ans. No, sir.

1178 Int. 45. State whether or not any money or means of any kind was furnished or procured to be furnished by said Antoine Le Claire, or by any person for him, either directly or indirectly, in order to pay the purchase-money for said farm on said sale, under said trust deed, or any part thereof.

Ans. None, to my knowledge.

Int. 46. Are you able to state of your own knowledge, whether or not

any sum of money was paid by Antoine Le Claire, or furnished by him for the purpose inquired about in the last preceeding interogatory?

Ans. I do not think there was any paid by him.

Int. 47. State particularly when and where you saw said May on the day of said sale.

Ans. As I was coming up to the court-house to attend the sale, I saw Mr. James May on or about the southeast corner of the court-house block.

Int. 48. About what hour of the day was this?

1179 Ans. The sale was advertized, I think, for two o'clock in the afternoon, and it was about that time I saw him.

Int. 49. State whether or not Ebenezer Cook was present at the said sale.

Ans. I do not re[re]member, but think he was not.

Int. 50. Do you know of anything done by either said Dessaint, Ebenezer Cook, John P. Cook, or George L. Davenport for the purpose of procureing said sale to be made; if so, what?

Ans. I do not.

Int. 51. Did you ever have any conversation prior to or about the time of said sale with said Antoine Le Claire, or either of the others defendants herein, or were you present at any conversation between them, or any of them, relating to the procuring of a sale of said property under said deed of trust, or in reference to buying said farm at said sale for the benefit of said Antoine Le Claire, or in reference to doing anything to prevent said May from fulfilling his said contract with said Antoine Le Claire? If so, state the same.

1180 (Objected to as incompetent, calling for mere hearsay.)

Ans. I do not remember of having any such conversation or hearing any such conversation.

Int. 52. What interest, title, or ownership had Antoine Le Claire in or to said farm, either directly or indirectly, according to your knowledge or information, from the time of said sale thereof under said trust deed, down to the time when said agreement, testified of by you, was made between him and you for the conveyance of said farm to you?

(Objected to so far as it calls for the witnesses' information as calling for hearsay.)

Ans. None.

Int. 53. What control, if any, did said Antoine Le Claire exercise over said farm, and what rents or profits, if any, did he receive therefrom during the interval of time referd to in the last preceeding interogatory?

Ans. He never had any control over and received no rents or profits from said farm.

1181 Int. 54. Did you, during said interval of time, have any control over said farm, or any title, interest, or ownership therein; if so, what?

Ans. None more than getting a crop off of it for the year 1859.

Int. 55. Prior to the execution of said agreement between you and said Antoine Le Claire, testified of by you, had you had any conversation with him in reference to said farm; if so, what?

(Objected to for the same reasons as to int. 51.)

Ans. I had conversation with him in reference to buying it for me. I don't know as I remember all of said conversation.

Int. 56. State as near as you can the substance or purport of said conversation.

(Objected to for same reasons as the 51st int.)

Ans. The substance of the conversation was that I told him I wanted the farm, and he said he would purchase it if he could.

Int. 57. State whether or not other parties besides the defendants Davenport, E. Cook, & John P. Cook, had places of business as
1182 near or nearer to that of Antoine Le Claire in the year 1859, as those of the said Cooks & Davenport; and, if so, how many?

(Objected to as immaterial.)

Ans. Yes, sir; I cannot tell how many there were—quite a number.

Int. 58. Is it not the fact that the places of business of all the said parties were situated in the busevest part of the city of Davenport, and that the most densley occupied for business purposes?

(Objected to as immaterial.)

Ans. It is.

Int. 59. State what is the situation of said Louis C. Dessaint in reference to pecuniary ability and means.

(Objected to as immaterial.)

Ans. I consider him rich, one of the best business men of the city, and a man that has generally got money to loan at a good interest.

(Answer objected to as not responsive, and as giving the opinion of the witness, and not facts.)

1183 Int. 60. Do you know of his having purchased a farm, other than the said Rose Bank farm, since the sale thereof by him; and, if so, where is the same situated, and how near to Rose Bank farm?

(Objected to as immaterial.)

Ans. He has purchased land about a mile northwest of Rose Bank, since he sold Rose Bank, and has improved the same, and made it one of the nicest farms in Scott County.

(The last clause of the answer objected to as not responsive.)

Int. 61. What improvements, if any, has he made upon said land purchased by him?

(Objected to as immaterial & irrelevant.)

Ans. He has built a fine large dwelling, and large barns and stable, all kinds of out-houses, excellent fences, planted fruit trees and shrubery of all kinds, and everything to make it one of the most desirable places about Davenport.

Int. 62. Did you attend the foreclosure sale of property on Le Claire's uper reserve mortgaged by A. H. Davenport to Antoine Le Claire
1184 under the decree of foreclosure of said mortgage? If so, in what capacity, or on whose behalf did you attend the said sale?

Ans. I did attend such sale in the capacity of agent for Antoine Le Claire, and on his behalf and interest.

Int. 63. Did you bid in the said property at said sale; if so, for whom did you bid it in?

(Objected to for the reason that the official record of said sale is the best evidence.)

Ans. I bid it in for Antoine Le Claire.

Int. 64. Who usually attends sales under decrees of foreclosure in favour of Antoine Le Claire on his behalf, and bid for him?

(Objected to as immaterial.)

Ans. I do generally.

Int. 65. Did you or not announce at said sale, that you bid for Antoine Le Claire?

Ans. No, sir; I think not.

Int. 66. Why did you not?

1185 Ans. I cannot say; did not know whether it was necessary or not.

Int. 67. Was there any agreement or understanding between you and Antoine Le Claire, or any one acting for him, that you should bid off the property in your own name?

Ans. I think there was such an arrangment, but there never was any papers passed to or by me in regard to the sale of that property.

(The latter part of said answer objected to as not responsive.)

Int. 68. What was the agreement refered to by you in your last answer, and with whom made?

(Objected because it is not in relation to any matters inquired about in the direct examination.)

Ans. The only arrangment was that I should go up to the court-house and bid on the property, and bid it in; this arrangment was made, I think, with his attorney, John P. Cook.

Int. 69. Do you mean, by your last answer, that the arrang-
1186 ment was that you should go to the court-house and bid off the property in your own name as the purchaser, and not in that of Antoine Le Claire?

(Objected to for same reason as the last preceeding int., & for the further reason that it suggests the answer to be given.)

Ans. It was purchased, I suppose, by me on the day of sale. It was so understood, and knocked of to me by the sheriff.

Int. 70. Interrogatory 69 repeated.

Ans. In my name.

Int. 71. Why, or for what reason, were you to bid off the property in your own name?

(Objected to as irrelevant & immaterial.)

Ans. For no reasons that I know of or was interested in.

Int. 72. Why was not the sheriff's deed made to you?

(Objected to as above.)

Ans. Because I was not the real purchaser.

JOS. A. LE CLAIRE.

1187 The further taking of these depositions is here adjourned until Monday, February 22nd, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MONDAY, FEBRUARY 22ND, 1864—9 *o'clock a. m.*

The complainant appeared pursuant to adjournment to complete the examination of said witness J. A. Le Claire, but the said witness failing to appear, this examination is adjourned 'til 2 o'clock p. m. of this day.

R. LINDERMAN, *Com'r.*

FEBRUARY 22ND, 2 *o'clock p. m.*

The said complainant appeared pursuant to adjournment, and the said witness J. A. Le Claire, still failing to appear, the further taking of these depositions is adjourned untill Tuesday, February 23d, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

FEBRUARY 23D, 1864—9 *o'clock a. m.*

The said witness, J. A. Le Claire, still failing to appear, the further taking of these depositions is here adjourned to 2 o'clock p. m. of this day.

R. LINDERMAN, *Com'r.*

1188 FEBRUARY 23D, 1864—2 *o'clock p. m.*

The said witness J. A. Le Claire, not appearing, for the purpose of giving more time to procure his attendance, his examination is continued to February 24th, 1864, at 2 o'clock p. m.

R. LINDERMAN, *Com'r.*

No. 2.—*Deposition of D. Navin—direct inf's No.* 1 *to No.* 17.

Dennis Navin, being produced and sworn on the part of complainant, deposes as follows:

Int. 1st. What is your name, age, place of residence, and occupation?

Ans. Dennis Navin; about 30 years of age; Davenport Township, Scott County, Iowa; farmer.

Int. 2nd. Do you know the parties to this cause, or either or any of them; and, if so, which of them, and how long have you known them?

Ans. I know the parties; have known them five years.

Int. 3d. Are you acquainted with Joseph A. Le Claire; and, if so, how long have you known him?

Ans. I am; have known him five years.

1189 Int. 4th. Are you acquainted with the farm known as Rose Bank, situated a short distance north of the city of Davenport?

Ans. Yes, sir.

Int. 5th. State, if you know, who worked and occupied that farm the spring of 1859 to the spring of 1860.

Ans. I occupied it then for Joe Le Claire.

(Last clause of the answer objected to as not responsive to the question.)

Int. 6. With whom did you make the agreement under which you worked and occupied the farm for that year?

Ans. With Joe Le Claire.

Int. 7. State whether, under the agreement between you & him, you worked the farm on shares, or paid him for the use of it in money or its equivelant.

(Objected to as leading, the proper question being what the agreement was.)

Ans. I worked it on shares.

1190 Int. 8. State what the agreement was between you and Joseph A. Le Claire under which you worked and occupied the premises.

Ans. He was to furnish me with a team & seed, and I was to have the one-third and he two-thirds delivered on the place when harvested; he to haul it away himself.

Int. 9. State whether or not this agreement to work on shares, as you have stated, under which you was to receive one-third and he two-thirds of the crop, included the grass and hay raised on the premises with the grain crop, or only the grain crop?

Ans. It included everything raised, hay, potatoes, and everything; he was to get two-thirds of.

Int. 10. State, as near as you can, what month in the spring it was you went on to the premises.

Ans. About the latter part of March, as near as I can recollect.

Int. 11th. About what time did you leave it?

Ans. I think it was in April, 1860, as near as I can come to it.

1191 Int. 12. Who went upon and took possession of the farm when you left it?

Ans. Mr. Wilson went in the house and took possession.

Int. 13. State whether or not this crop was divided after harvest between you and Le Claire; and, if so, what share of the proceeds of the farm he received, and what share you received for that year?

Ans. The oats was divided in the barn; the other crops were divided on the place. He received two-thirds and I received one third.

Int. 14. State, as near as you can, the amount or amounts of hay and grain that was raised on the farm that year, & that were received by Joseph A. Le Claire.

Ans. Somewhere about twenty tons of timothy hay, and some 3 or 4 tons of wild grass; between 500 & 600 bushels of oats. I suppose somewhere from 200 and 250 bushels of potatoes. There were about 30 acres of corn, of which he had two-thirds. Could not tell how many hundred of bushels there was.

1192 Int. 15. Give the best estimate you can, the quantity of corn received by Le Claire for that year?

Ans. It is hard for me [me] to come at that; should think it would average about 30 or 40 bushels to the acre, as near as I can come to it.

Int. 16. What, in your judgment, was the fair and reasonable value of the products of the farm received by Jos. A. Le Claire during that year, including the grain, potatoes, hay, and grass?

(Objected to as immaterial.)

Ans. I should think, as near as I can come to it, some $500 or $600.

Int. 17. State who was in possession of Rose Bank, for a year or two prior to the time that you went into it, in the spring of 1859.

(Objected to as immaterial.)

Ans. For a year or two before that time Capt. May's family was in possession of it.

1193 Int. 18. Do you know, or can you set forth, any other matters or thing that may be of benefit or advantage to the parties at issue in this cause, or either of them, or that may be material to the subject of this, your examination, or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

Ans. I don't know as I do.

Cross-examination of this witness postponed until Feb'y 24, 1864, at 2 o'clock p. m., and the further taking of these depositions adjourned until 9 a. m. of that day.

R. LINDERMAN, *Com'r.*

FEBRUARY 24, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

No. 3—*Deposition of J. W. Harrison—direct int. No.* 1 *to No.* 21.

J. W Harrisson, being produced & sworn on the part of complainant, deposeth as follows:

Int. 1. What is your name, age, place of residence, and occupation?

Ans. J. W. Harrisson; in my 51st year; Davenport, Iowa; real estate-agent.

1194 Int. 2. Do you know the parties to this suit, or either or any of them, and, if so, which of them, and how long have you known them?

Ans. Know the parties; have known them all about seven years.

Int. 3d. Are you acquainted with Joseph A. Le Claire, and, if so, how long have you known him?

Ans. I am; have known him about seven years.

Int. 4th. State what you know, if anything, in relation to the convey-

ance of lots and lands in the State of Iowa, by the firm of Cook & Sargent, or either of them, to Antoine Le Claire in his lifetime.

(Objected to as immaterial.)

Ans. I understood from Antoine Le Claire that the list of lands I now hold in my hand was conveyed by Cook & Sargent to him on a debt they owed him. I also learned of such conveyance from George L. Davenport and Joseph A. Le [Le] Claire, the agent of Antoine Le Claire.

Int. 5. Please produce the list of lands you refer to in your
1195 last answer.

(Objected to as immaterial.)

Ans. I here produce said list, and hand it to the examiner.

(The said list is annexed as an exhibit, marked "R."

Exhibit objected to as immaterial.)

Int. 6. State, if you know, who procured this printed list to be prepaired and printed. State what you know on that subject.

(Objected to as immaterial.)

Ans. Mr. Joseph A. Le Claire had it printed, and handed it to me.

1196 Int. 7. State for what purpose they were left with you.

(Objected to as immaterial.)

Ans. For me to make sale of the lands contained in them.

Int. 8. In what business were you engaged at that time?

Ans. I was a real estate agent.

Int. 9. How many copies of the printed list did Joseph A. Le Claire leave with you?

(Objected to as immaterial.)

Ans. About 200, perhaps more.

Int. 10. State, as near as you are able, the time the lots and
1197 lands contained in this list were conveyed by Cook & Sargent to Antoine Le Claire.

(Objected to as immaterial, and because the matter admits of better evidence, to wit, documentory.)

Ans. About the time of the failure of Cook & Sargent, or just before their failure.

Int. 11. Who is the acting executor of the estate of Antoine Le Claire?

Ans. George L. Davenport, I understand, sir.

Int. 12. State what you know, if anything, in regard to Geo. L. Davenport's, as such executors, now holding or offering the lands contained in this list for sale.

(Objected to as immaterial.)

Ans. I understand he holds the lands for sale. I am authorized to sell them by Davenport, and have sold some of them.

1198 Int. 13. State whether you know the farm lying a short distance north of the city of Davenport, called and known as Rose Bank.

Ans. I do know it well. It was sometimes called the "May farm."

Int. 14. Did you, at any time, have a conversation with Jos. A. Le Claire, concerning or relating to the conveyance of that farm to him by Antoine Le Claire? and if you had a conversation with him on that subject, state what it was, and when it occured.

(Objected to because the conversation inquired about is not evidence against these defendents, or any of them.)

Ans. I had a conversation with him. It occured shortly after the death of the old man. He told me the old man would have conveyed the farm to him if he had lived; that the old man intended to
1199 convey it to him. I asked him why he did not get a deed for it. He said the old man would have made it if he had not died. By the old man in this answer, I mean Antoine Le Claire.

Int. 15. State whether you at any time had any conversation with Antoine Le Claire in respect to the ownership of Rose Bank farm, and, if you did, state as near as you can the conversation.

Ans. I don't remember of having had any particular conversation, but the impression is on my mind that I heard him say that he had got the farm of Capt. May.

Int. 15½. About what time was it that you had this conversation?

Ans. Shortly after this trade between Capt. May and Le Claire.

1200 Int. 16. State whether or not at any time Geo. L. Davenport, the executor of Antoine Le Claire, directed or authorized you to make a proposition for the conveyance of Rose Bank to Capt. May, and if so, state when it was, and what directions or authority he gave you.

Ans. Well, sir, he authorized me to say to Capt. May that he would sell Rose Bank farm for the sum of $7,000, and give a quitclaim deed for the same, or that he would sell the same with the judgments & liens upon it for $8,000, and give a quitclaim. This was in January, 1862.

Int. 17. State whether this proposition was made by Davenport, as the executor of Antoine Le Claire, or in his own right.

(Objected to as leading, and because it asks the witness to give a construction to what said Davenport said, and not to give the language itself.)

Ans. I understood as executor of the estate.

(Answer objected to as not responsive, and as giving the witnesses' understanding, and not the language used.)

1201 Int. 18. Ware you, in 1859, engaged in the business of buying and selling real estate as real estate agent?

Ans. I was.

Int. 19. In July, 1859, in what way would the sale of Rose Bank have been most advantageous to the owner by a sale of it in a body, or by dividing it and selling it in parcels?

(Objected to as immaterial, and as calling for a mere conjecture of the witness and not for any matters of fact.)

Ans. I would have sold it in a body had it been mine.

Int. 20. Suppose that portion of the farm lying nearest to the city had been divided into lots of five or ten acres each, and sold in such quantities, would such a sale have yielded more in your judgment or less than a sale of the farm in a body?

(Objected to as immaterial, leading, and calling for a mere conjecture of the witness.)

Ans. I think less; from the fact that the creek cuts it up, and

1202 it would not answer to divide.

Int. 21. Do you know, or can you set forth, any other matters or thing that may be of benefit or advantage to the parties in this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea, set forth the same fully and at [at] large in your answer.

Ans. I do not.

Cross-examination.

The defendents' solicitor, not waiving any objection to the taking of these depositions, but expressly reserving the same, propounds the following cross-interogatories, viz:

Cross-int. 1. How long have you been engaged in the real estate agency business in the city of Davenport?

Ans. Since the fall of 1856.

2nd. Has that been your sole or main business, during that
1203 period of time?

Ans. It has been my main business during that time, except about five months that I hard charge of the coal companies' business.

C. int. 3. When was said five months?

Ans. I don't recollect.

C. int. 4. State how extensive have been your real estate transactions in Scott County during that time, and the degree of your familiarity with values of land in said county?

Ans. Comparing it with the business of the county it has been large. I had sold a large amount of property, both city and county lands; I think I am pretty well posted on the prices and value of property in said county.

C. int. 5. What, in your opinion, was the fair cash value of the farm in question in July, 1859?

Ans. Fifty dollars an acre.

C. int. 6. When did the conversation with George L. Daven-
1204 port about authorizing you to sell said farm occur, and where?

Ans. In January, 1862; once in his office, and once in the street.

C. int. 7. Who were present at the first of said interviews?

Ans. I don't remember who was, or whether any one.

C. int. 8. Can you state particularly the conversation then had in reference to said farm?

Ans. He told me that he would take $7,000 and give a quitclaim deed, or that he would take $8,000, with the judgment, &c.; as I have stated, I went to him to see about it.

C. int. 9. Is that all you can recollect of his having said to you about it at that time?

Ans. It is. He may have said something I do not now recollect.

C. int. 10. State particularly the conversation which passed between you on the same subject, at the interview on the street.

1205 Ans. It was about the same as the other. He said he would not do anything else; that was the best he would do. I wanted him to put the offer in writing; he said it was not necessary.

Re-examinined.

Int. 1—re-examination. State whether this conversation in which he desired you to offer this land to Capt. May at the price you have mentioned, occured at the same time that he authorized you to make sales of the lands described in this printed list which you have produced, or whether it was at a different time.

Ans. It was at a different time, and after I had received the printed list.

Cross-examination resumed.

C. int. 11. Did you, at the said time, go to see said Davenport in referance to said farm at the request or instance of complainant May?

Ans. I did.

C. int. 12. Did you inform said Davenport that you came to
1206 see him about said farm at the said May's instance, or on his behalf?

Ans. I told him Capt. May wanted to buy it, and that I wanted to know what he would take for it.

J. W. HARRISON.

FEBRUARY 24TH, 1864—2 *o'clock p. m.*

The witness, Joseph A. Le Claire, not appearing, his examination is adjourned 'til to-morrow, February 25th, at 2 o'clock p. m. To which time also the cross-examination of Dennis Navin is adjourned, and the further taking of these depositions is adjourned until 9 o'clock a. m. of that day.

R. LINDERMAN, *Com'r.*

FEBRUARY 25TH, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

No. 4—*Depos't'n Jas. Thorington—direct int's No.* 1 *to No.* 20.

James Thorington sworn and examined on the part of the complainant:

Int. 1. What is your name, age, place of residence, and occupation?

1207 Ans. James Thorington; 47 years; reside at Davenport, Scott County, Iowa; occupation, lawyer.

Int. 2. Do you know the parties to this suit, or either or any of them, and, if so, which of them; and how long have you known them?

Ans. Know all of them; have known them for 16 or 17 years except Mr. Dessaint; have known him some seven years.

Int. 3d. Did you know Antoine Le Claire; and, if so, how long had you known him prior to his death?

Ans. I did; had known him since the spring of 1839.

Int. 4. Are you acquainted with Joseph A. Le Claire; and, if yea, how long have you known him?

Ans. I am; have known him about twenty years.

Int. 5. Were you sheriff of Scott County, Iowa, in the year 1861?

1207 Ans. I was.

Int. 6. Did you, as such sheriff, receive a special execution upon a judgment or decree rendred in the district court of Scott County, in favour of Antoine Le Claire against Adrian H. Davenport and others? If yea, state at what time you received the same.

Ans. I did; on the 9th of April, 1861, at 4 o'clock p. m.

Int. 7. State whether or not, as such sheriff, you sold the property described in said special execution; and, if yea, when?

Ans. I did; on Saturday, the 18th day of May, 1861, at the hour of 9 o'clock a. m., pursuant to notice.

1208 Int. 7½. Have you that execution and the papers containing your return thereon?

Ans. I have.

Int. 8. Please produce the same before the commissioner for the purpose of having a copy made thereof as an exhibit.

Ans. I here produce said papers, and hand them to the com'r.

(The said execution and return are annexed by copy marked Exhibit "S." The said exhibit objected to as uselesly encumbering the record with waste paper.)

Int. 9. Please look upon the writing in pencil on the back of the return in the words and figures following: "$20,000, J. A. Le

1209 Claire," and state in whose handwriting that entry is.

(Objected to as immaterial.)

Ans. In mine.

Int. 10. Did you attend and conduct the sale of said premises in person or by deputy?

Ans. I attended and conducted said sale in person.

Int. 11. State who bid off those premises at the sale.

Ans. Jos. A. Le Claire.

Int. 12. State to whom the deed was subsequently given under that sale.

Ans. To Antoine Le Claire.

1210 Int. 13. State by whose direction or under whose authority the deed was given to Antoine Le Claire.

(Objected to as immaterial, and as calling for the declaration of third parties.)

Ans. By the direction of John P. Cook and Charles E. Putnam, esq'r's.

Int. 14. Were you present at any interview between John P. Cook and Chas. E. Putnam in relation to the conveyance to Antoine Le Claire?

Ans. I was not.

Int. 15. State what conversation you had with John P. Cook, if any, in relation to delaying the execution of your deed under this sale.

Ans. I saw John P. Cook and told him I was ready to make the deed; this was soon after the sale under the execution; he stated in effect that he wished me to delay it until the return of Mr. Putnam, who

1211 was then absent, before he concluded to whom to make the deed.

Int. 16. State who were present at the sale that you recollect.

Ans. I don't know as I can tell further than Mr. Joseph A. Le Claire, and I believe John P. Cook was present, & Capt. James May.

Int. 17. State whether at the time of this sale you had a written notice that you received from Capt. James May giving notice to bidders that he claimed some interest in the mortgaged property; and if you had such a notice, whether or not you read it in the presence of the bidders before the sale.

(Objected to as immaterial, and as calling for the contents of a written instrument, of which their is better evidence.)

Ans. I had; and stated that at the request of Capt. May I

1212 would give that notice, and read it.

Int. 18. Can you state what has become of that notice?

Ans. I cannot; it is either lost or misplaced; and I cannot say at present where it is to be found.

Int. 19. Can you give the contents of that notice, either in terms or in substance?

(Objected to as immaterial, and because the papers is the best evidence of its contents.)

Ans. My memory has been refreshed by a paper handed me by Capt. May, which is in substance the notice, and a copy of which I read, which paper I here hand to the commissioner for the purpose of being attached as an exhibit.

(The said paper is attached as Exhibit "T."

1213 The said exhibet objected as immaterial, not the best evidence, and because it appears to have been fabricated by the complainent.)

Int. 20. State whether at the time of this sale Joseph A. Le Claire bid in these premises in his own name and for himself, or whether he claimed that he was bidding for some one else; and, if for any one else, for whom.

(Objected to as immaterial and leading, the proper question being in what form or in what language was the bid made.)

Ans. He gave in his own name as the purchaser.

Adjourned until 2 o'clock p. m.; and the further examination of this witness until 9 o'clock a. m. to-morrow, Feb'y 26.

FEB'Y 26—9 *o'clock a. m.*

Examination resumed pursuant to adjournment. The defendent solicitor not waiving any objections to the taking of these depositions, or any of them, but expressly reserving the same, propounds the following cross-interogatories, to witt:

1214 *Cross-interrogatories No. 1 to No. 20, &c.*

Cross-int. 1. Was not Joseph A. Le Claire in the habit of attending at sheriffs' sales under judgments in favour of Antoine Le Claire, as the agent of Antoine Le Claire, and bidding for him?

Ans. I think he was, sir.

C. int. 2. Did not John P. Cook tell you in the conversation about the making of the deed, that Joseph A. Le Claire had bid the property off mearly as agent for his uncle Antoine Le Claire, and that there was no idea or intention of his bidding it off in his own name?

Ans. That was the effect of Mr. Cook's conversation with me.

Re-examination resumed.

Int. 1. Do you now recollect any sale made by you as sherriff in 1861 or 1862, at which Joseph A. Le Claire appeared and bid for Antoine Le Claire?

Ans. Not without refering to my books.

2. When Joseph A. Le Claire did appear at the sales and bid
1215 on the property for Antoine Le Claire, state whether or not he usually informed you that he bid in the property for Antoine Le Claire.

Ans. That is my impression.

3d. How long was this conversation refered to by you in your 2d cross-int. between John P. Cook and yourself after that conversation mentioned in your direct examination, in which he told you that he wished you would delay making the deed until Putnam got back?

(Objected to because it assumes what does not appears to be the case, to wit, that the conversation mentioned in the cross-examination is a different one from the one refered to on the direct examination.)

Ans. All conversations with Mr. Cook in relation to the making of the deed, and to whom to make it, occured very shortly after the day of sherriff's sale, say a few days more or less.

4th. In your direct examination you state in substance that you told Mr. Cook that you was ready to make the deed, and asked
1216 him to whom you should make it, and he requested you to delay making the deed until Mr. Putnam returned before he concluded to whom to make the deed; was it in that same conversation or in a subsequent one that he directed you to make the deed to Antoine Le Claire?

Ans. It must have been a subsequent one.

5. About how long after did it occur, as near as you can state

Ans. A few days.

Cross-examination resumed.

C. int. 1. Will you please to state the whole of the conversation between yourself and John P. Cook mentioned by you in your answer to direct int. 15, as fully as you are able to do?

Ans. The substance of the conversation is all I can give. The question between us was as to whom was to make the deed, whether Joseph A. Le Claire or Antoine Le Claire; Mr. Cook assuming that although Joseph A. Le Claire gave in his name as the purchaser at the sale, in fact
1217 was only agent for his uncle, notwithstanding my impression to the contrary; and as it was not material it was concluded to delay the execution of the deed until the return of Mr. Putnam, who was then absent from the city. Mr. Putnam acting in very important matters at that time for Mr. Le Claire with the sherriff of Scott County is the reason why he was refered to.

C. int. 2. Was it not on this occasion that Mr. Cook told you, as stated in your answer to cross-int. No. 2?

Ans. I think probably it was at that time.

C. int 3. Did not Mr. Cook in this conversation express surprise that there should be any idea that the deed should be made to Joseph A. Le Claire?

Ans. I don't know as he did.

JAMES THORINGTON.

The further taking of these depositions is here adjourned until 2 o'clock p. m., Feb'y 27th, 1864, to which time also the examination of tho witness J. A. Le Claire is continued.

R. LINDERMAN, *Com'r.*

1218 EXHIBIT "T."

PORT BYRON, *May* 14, '61.

Hon. JAMES THORINGTON,
Sheriff of Scott County, Iowa:

Herewith you have a printed copy of an equity bill that I have filed in the U. S. court at Keokuk, Iowa, vs. Antoine Le Claire & others, in which I set forth that I have an equitable claim on the mortgage and the collaterals thereto pertaining, which is advertised by you under an execution vs. A. H. Davenport, of Le Claire, Iowa, and sundry other persons, to be sold on Saturday, the 18th inst., between the hours of 9 o'clock a. m. & 4 o'clock p. m., commencing at the hour of 9 o'clock a. m. Any person purchasing or intending to purchase may learn the state of the case by examining the papers in the office of the clerk of the Scott County district court, and the equity bill that is filed in the U. S. court at Keokuk, Iowa. Whatever equitable and legal rights I may have in the premises I hope to contend for, therefore deem it proper to request you to admonish & notify bidders and purchasers accordingly.

Yours, respectfully,

JAMES MAY,
Of Port Byron, Ill's.

(Indorsed:) Exhibit T.

1219 No. 5.—*Depos't'n Dennis Navin—cross-int's No.* 1 *to No.* 13.

FEBRUARY 25TH, 1864—2 *o'clock p. m.*

Examination of Dennis Navin resumed, pursuant to adjourment.

The following cross-interogatories are propounded by defendants' solicitor, not waiving any objections to the taking of these depositions, or any of them, but expressly reserving the same:

Cross-int. 1. State whether you know of Louis C. Dessaint coming upon

said farm in the summer of 1859 and doing, or procuring to be done, any work upon the same.

(Objected to for the reason that it is not a cross-examination of any matters called out on the direct examination.)

Ans. Yes; he came out there and done some little work.

C. int. 2nd. State what he did, or procured to be done, upon said farm.

(Objected to for the same reasons as the last preceeding int.)

Ans. He trimed some apple-trees, and his hired man cut some grass arround the door-yard, which was left there.

1220 C. int. 3. Do you recollect any other work or repairs done by said Dessaint upon said premises?

(Objected to for the same reasons as the 1st int.)

Ans. I don't recollect of his doing any other work there.

C. int. 4. Did not said Dessaint repair or cause to be repaired the main gate to said premises, on the road?

(Objected to for the same reasons as the 1st cross-int., and also because the enquiry is leading, and being upon new matters a leading question is not permitted.)

Ans. If he done anything to the gate I don't know it.

C. int. 5. Did you have any conversation with said Dessaint upon said premises at the time said hay was cut by him about the same; and, if so, what?

(Objected to for the same reasons as the last preceeding question, and also for the reason that the declarations of the parties defendent
1221 are not competent in his own favour, and are therefore inadmissable.

Ans. I did not have much conversation with Dessaint on the place; it was some time after, in town.

C. int. 6th. Did you have any conversation with said Dessaint's hired man upon said farm, at or about the time said hay was cut by him, about said hay; and, if so, what did you say to him about the same?

(Objected to as not within the scope of a legitmate cross-examination; 2nd, as heresay, the declarations of this witness not being competent evidense against the complainant.)

Ans. He came out there to cut some hay, and I asked him what kind of hay he was going to cut. He said timothy hay. I told him the timothy hay was all cut except a little arround the door-yard, and that was nearly all weeds; but I told him he could cut it if he had a mind to, but that it didn't amount to much, and that I didn't think Mr. Dessaint had any right to it at all.

(To that part of the answer which gives the declarations of Dessaint's hired man is objected to for the reason that the question
1222 does not call for such declarations, and they are not responsive to the question, and they are incompetent against the complainant.)

C. int. 7. Did you afterwards have a conversation with said Dessaint about the same subject? If so, state the same.

(Objected to as not within the scope of legitimate cross-examination, and incompetent, as calling for the declarations of the defendant.)

Ans. Yes; I had a conversation with him in town. He asked me if I hindred his hired man of cutting the hay; (it was in the old man Le Claire's office.) I told him I did, but that I did not hinder him an awful sight. I told him that if he cut the hay I would not get any of it, nor Joe Le Claire would not; and that I thought he hadn't any right to it.

(Answer objected to as giving a conversation between the witness

and the defendent, which is not competent to charge the complainant.)

1223 C. int. 8. Did you tell him why you thought he had no right to it?

(Objected to for the same reasons as the last interogatory, as calling for the declarations of the witness, and as immaterial.)

Ans. I forget if I did; but don't think I did.

C. int. 9. Did you not tell him that you had rented the farm for a year, and that he could not turn you out of the possession of it, or something to that effect?

(Objected to for the same reasons as the last preceeding interogatory, and because that it is a direct and leading question to the witness on matters called out by the defendants, and not enquired about by the complainant.)

Ans. I don't know that there was any talk about possession; but I told him that he could not take the hay away as long as I had rented it, until I got my share of it.

C. int. 10. Were you not informed at or about the time that the said work was done by said Dessaint upon the said premises, either

1224 by Joseph A. Le Claire or said Dessaint, that said Dessaint had become the owner of the said farm?

(To this question the complainant objects: 1st. Because it is not within the scope of legitimate cross-examination, and calls for the declaration of the said Dessaint and Joseph A. LeClaire, neither of which are compatent evidence against the said complainant, or in favour of the said defendents; that there is better evidence of a sale or ownership than the declarations of the said Dessaint and Le Claire.)

Ans. Yes; Joe Le Claire told me that Dessaint had bought it. I asked him if he had anything to do with me; and he said not.

(The last clause objected to by def'ts' solicitor as not responsive to the question.)

C. int. 11. At whose instance or request did you finally leave said farm?

Ans. At Mr. Davenport's—George L. Davenport's.

(Answer objected to as giving the declarations of the defendents Davenport.)

Int. 12. How many times has the complainant May talked with you about your evidence in this case, and when & where?

1225 Ans. He spoke to me once out at my own house about it, and in town a few times—I don't recollect exactly when. It is as much as nine months ago that he asked me something about it.

Int. 13. State how often in all, as near as you can, that he has talked with you upon the subject.

Ans. He has talked with me some two or three times, besides what he has asked me here in the court-house.

Re-direct interrogatories No. 1 to No. 31.

The complainant, saving and resrving all objections by him to the interogatories put to this witness, propounds to him the [the] following interogatories on his re-examination, viz:

1st. Where & when did the conversation between you and Mr. Dessaint, about the hay, take place?

Ans. At Antoine Le Claire's office, some time in the summer of 1859.

2nd. State who was present at Le Claire's office at that time.

1226 Ans. I don't recollect, excepting Mr. Le Claire and Mr. Dessaint.

Int. 3. Which Mr. Le Claire?

Ans. The old gentleman—Antoine Le Claire.

4th. Was there any conversation at that time that you heard in regard to the farm or the hay, between Antoine Le Claire and the defendent Dessaint?

Ans. I don't think there was any conversation about the hay, excepting the bit that Dessaint cut there.

5th. How many times did you see Mr. Dessaint up at Rose Bank farm, at or about the time the orchard was trimed and this hay cut, as you have stated?

Ans. As near as I could come to it, I saw him there about a half a dozen times.

Int. 6. After he first came there, did he come every day regu-
1227 larly, or was it several weeks after he came first before he came the last time?

(Objected to as leading, and as suggesting the answer desired.)

Ans. It is hard for me to answer whether he came regular or not. He came pretty regular, I think, for some half a dozen times, and then not so often. I think it was not very long from the time he commenced coming until he quit coming.

Int. 7. How long was it from the time he came there first to the last time you saw him there, as near as you can state?

Ans. As near as I can state it was about a half month—two weeks or so.

Int. 8. State whether or not at any of these times you saw the defendent and Joseph A. Le Claire there togather.

Ans. I forget whether I ever saw them there togather or not.

Int. 9. How long would it take to do this work on the premises that was done by Dessaint and his hired man?

1228 Ans. It would take about two or three days.

10th. In your answer to the 10th cross-int. you say that Joe Le Claire told you that Dessaint had bought it—meaning the farm. State what else he said at that time in reference to the farm or the use of it.

Ans. I don't know as he said anything else.

11th. State whether or not anything was said by him at that time as to whether or not it would interfere with your rights on the premises; and, if so, what was said?

(Objected to as leading.)

Ans. He did not say anything, except that Dessaint had nothing to do with me.

12. State whether you did or did not continue right along in the possession and occupation of the premises, the same after Mr. Dessaint was there as before.

(Objected to as leading.)

1229 Ans. I staid on the place the same way.

13. State whether the products of the farm, which were taken away by Joseph A. Le Claire, as stated by you in your direct-examination, was received and taken away by Le Claire before or after the time that Dessaint came there and did this work on the premises.

Ans. There was some hay taken away before, and the balance was taken away after, according as it was harvested.

14. Where was it that you had the conversation with George L. Davenport, in regard to leaving this farm?

Ans. In his office.

15. When?

Ans. It was along in the winter some time.

16. How long or about how long was it before you left the premises?
Ans. About two months, as near as I can tell.

1230 17. Had Davenport ever said anything to you about leaving the premises before the time of that conversation?

Ans. No, sir.

18. State what he said in this conversation.

Ans. I asked him if the farm was for rent. He said he dident know what he was to do about it; that he would let me know again what he was going to do about it.

19. Did you see him afterwards about it?

Ans. Yes, sir.

20. How long after?

Ans. A few weeks.

21. Where did you see him at that time?

Ans. In Washburn's store.

22. What did he say at this conversation?

1231 Ans. He said he would have to go out and see the place.

23. Did you see him after that at any time about it?

Ans. I did, sir.

24. How long after?

Ans. I could not tell exactly; it was only a few days, as near as I can tell.

25. Where did you see him at this time?

Ans. In his office, I think.

26. What did he say then?

Ans. He said that he had rented it to Mr. Wilson.

27. Are these three conversations with the defendent Davenport, which you have spoken of, the only conversations you had with him in respect to the farm, or the renting of the same, or the surrendering the possession thereof?

1232 Ans. I had one other conversation with him.

28. About when was this conversation?

Ans. It was a few days after.

29. Where was it?

Ans. In Mr. Antoine Le Claire's office.

30. What was that conversation?

Ans. He wanted I should give up possession right away to Mr. Wilson. Joe Le Claire was there, and he asked Joe what time I was to give up possession. He told me that I could get a place handy; that Mr. Wilson wanted to move in. I told him I would move as soon as I could get the stuf off of the place.

31. About how long was this last conversation before you left the farm?

Ans. It might be somewhere about two weeks, at the outside.

1233 The further examination of this witness is here adjourned until Saturday, Feb'y 27th, 1864, at 2 o'clock p. m., and the further taking of these depositions is adjourned until 9 o'clock a. m. to-morrow.

R. LINDERMAN, *Com'r.*

Neither of the witnesses, Dennis Navin or Joseph A. Le Claire, appearing this 2 o'clock p. m., Feb'y 27th, 1864, the time to which their examination was adjourned, the examination of the said witnesses is further adjourned until the 5th day of March, 1864, at 2 o'clock p. m., and the further taking of these depositions is here adjourned until the 29th day of Feb'y inst., at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

FEBRUARY 29TH, 1864—9 *o'clock a. m.*

For the purpose of examining the defendents Geo. L. Davenport and Louis C. Dessaint, the examination of all other witneses in this cause is continued until Saturday, the 5th day of March, A. D. 1864, at 2 o'clock p. m.

R. LINDERMAN, *Com'r.*

1234 SATURDAY, *March 5th—2 o'clock p. m.*

The further taking of these depositions is here continued until Monday, the 14th day of March, A. D. 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com.*

MONDAY, *March 14th*, 1864—9 *o'clock a. m.*

The further taking of these depositions, and the examination of the witnesses Joseph A. Le Claire and Dennis Navin, they not appearing pursuant to adjournment, is here adjourned until Monday next, March 21st, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

The said Navin & Le Claire not appearing this 21st day of March, 1864, the further taking of these depositions is again adjourned until Friday, March 25th, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MARCH 25, 1864—9 *o'clock a. m.*

The said Navin & Le Claire not appearing, the further taking of these depositions is here adjourned until March 29th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1235 MARCH 29TH, 1864—9 *o'clock a. m.*

The said Navin & Le Claire not appearing, the further taking of these depositions is here adjourned until to-morrow, March 30th, at 2 o'clock p. m.

R. LINDERMAN, *Com'r.*

MARCH 30TH, 1864—2 *o'clock p. m.*

Neither party wishing to examin the witness Navin further, his examination is here closed.

DENNIS his + mark. NAVIN.

Attest: R. LINDERMAN.

$1 50. Rec'd of James May, complainant, one 50-100 dollar, witness fees in the foregoing examination.

DENNIS his + mark. NAVIN.

Attest: R. LINDERMAN.

$3 00. Receved of James May, complainant, three dollars, witness fees in the foregoing examination.

GEORGE WILSON.

$3 00. Rec'd of James May, complainant, three dollars, witness fees in the foregoing examination.

JAMES THORINGTON.

Rec'd of James May four 50-100 dollars, witness fees in the foregoing case.

R. D. CONGDON.

$. Rec'd of James May, complainant, three dollars, witness fees in the foregoing examination.

JAMES THORINGTON.

1235 I, Rufus Linderman, commissioner as afores, do hereby certify that Geo. H. Parker, R. D. Congdon, A. H. Davenport, George Wilson, Joseph A. Le Claire, Dennis Navin, J. W. Harrison, and James Thorington, witnesses in the above-entitled cause, residing in Scott County, Iowa, were produced before me at my office in the city of Davenport, in said county, and each of them by me sworn to testify the whole truth and nothing but the truth in answer to the interrogatories propounded to them; that the interrogatories and answers thereto were reduced to writing by me, and the whole examination of each of said witnesses, respectively, was read over to them by me, and by said witnesses, and each of them, respectively, subscribed in my presence.

Given and certified this 30th day of March, A. D. 1864.

RUFUS LINDERMAN,
Commissioner.

I, Rufus Linderman, commissioner as aforesaid, do hereby certify that on the 29th day of January, A. D. 1864, Joseph A. Le Claire was being examined before me as a witness in the cause mentioned in the caption hereto; that on the evening of that day his further examination was adjourned until the 22nd day of February, A. D. then next, at 9 o'clock a. m.; that the said witness Joseph A. Le Claire was also summoned or suppœnaed to appear before me to testify at the time last above
1236 mentioned, (the said suppeona, with [with] the officer's return thereon, is hereto attached;) that on the 20th day of February, 1864, pursuant to stipulation of parties, (the said stipulation, together with a copy of the notice provided for therein, and the acknowledgement and proof of said service, are annexed,) the examination of said witness was resumed, and the whole of that day occupied in cross-examination; and after said cross-examination had been (at the request of defendants' solicitor) read over to said witness, and signed by him, his further examination was adjourned to February 22d, 1864, at 9 o'clock a. m. of that day; that on said 22d day of February the said Joseph A. Le Claire did not appear, and his examination was then and from time to time thereafter adjourned (as mentioned in the foregoing deposition) until the 30th day of March, 1864; that at no time from said 20th day of February up to the time designated in the order of court for closing the taking of these depositions did the said Joseph A. Le Claire appear before me. The affidavits of R. D. Congdon, esq., and Louis Hebert, in this matter, are annexed to the depositions.

Given and certified this 30th day of March, A. D. 1864.

RUFUS LINDERMAN,
Commissioner.

Commissioner's fees, $160, paid by complainant.

R. LINDERMAN, *Com'rs.*

1237 No. 11.

Deposition of L. C. Dessaint.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE LE Claire, and others. } In equity.

This bundle of paper consists of the deposition of Louis C. Dessaint alone.

1238 United States circuit court, district of Iowa.

JAMES MAY
vs.
GEORGE L. DAVENPORT, EX'T'R, AND MARGUERITE Le Claire, ex'tr'x, of A. Le Claire, dec'd, George L. Davenport, J. P. Cook, et als.

Dessaint.

In pursuance of an order of the United States circut court for the district of Iowa, hereto attached, appointing me a commissioner, &c., I, Rufus Lindeman, on the 11th day of Janu'y, 1864, at my office in the city of Davenport, in Scott County, & State of Iowa, proceeded, in accordance with said order and the notice hereto attached, to take the depositions of Louis C. Dessaint, George L. Davenport, witnesses named in said notice in a case pending in said court, wherein James May is complainant, & George L. Davenport, executor, & Marguerite Le Claire, executrix, of Antoine Le Claire, dec'd; George L. Davenport, John P. Cook, Ebenezer Cook, Louis C. Dessaint, et als., are defendants.

The said complainant appeared by his solisitor, J. M. Ellwood, esq., and the defendants George L. Davenport, executor, & Marguerite Le Claire, John P. Cook, Ebenezer Cook, and Louis C. Dessaint, appears specially by John N. Rogers, their solisitor, and objects to any depositions being taken, because—1st. The testimony of numerous witnesses has already been taken in this case by complainant on commission and written interrogatories. 2nd. No notice has been given by either party to the other that such party desired the in the cause to be taken orally. 3rd. The examiner has not been furnished with copies of the bill & bill of revivor & answers herein.

1239 *Deposition of L. C. Dessaint—direct int. No. 1 to No. 321.*

The defendents George L. Davenport and Margruette Le Claire, executor & executrix of Antoine Le Claire, deceased, and also in their own right, John P. Cook, Ebenezer Cook, and Louis C. Dessaint, appears by their solicitor, John N. Rogers, and objects to the taking of these depositions under the said notice, for the reason that the dépositions of numerous witnesses have been heretofore taken by the complainant on commission and written interogatories, and that no depositions can be taken here on oral interogatories without the consent of all the parties thereto.

1240 The said defendent Louis C. Dessaint, produced and sworn on the part of the said complainant, deposes as follows:

Int. 1st. What is your name, age, place of residence, and occupation?

Ans. Louis C. Dessaint; 47 years; Davenport, Iowa; engaged in saw-mill.

Int. 2. Do you know the parties to this suit, or either or any of them, and, if so, which of them, and how long have you known them?

Ans. I know the parties; have known them about nine years.

Int. 3d. Are you one of the defendents in this suit?

Ans. I believe they have made me one, sir.

Int. 4th. Were you acquainted with Antoine Le Claire at and before the time of his death; and, if so, how long prior to his death had you known him?

Ans. I was; was acquainted with him from 1854 until his death.

1241 Int. 5th. Where did you reside during the year 1859, and how long had you resided there?

Ans. In the city of Davenport; resided there since 1854.

Int. 6. Were you acquainted with the farm & premises called and known as Rose Bank, situated a little north of the city of Davenport?

Ans. I know the farm.

Int. 7. State who resided upon that farm in 1857 & 1858, if you know.

Ans. I think the farm was rented; I cannot call the man by name; he was here on Saturday last; he had it in the fall of 1858, if I remember right.

Int. 8. State who resided there in 1857, if you know.

Ans. I don't recollect.

Int. 9. Do you know of Capt. James May's living upon the farm prior to the spring of 1859? and, if so, state when.

Ans. I only remember the winter of 1855; I think Capt. May

1242 was living there then; have no recollection of any one else, or any other time.

Int. 10. State whether you at any time in the year 1859 received a deed or conveyance of this farm from one Charles Powers; and, if yea, at what time in the year?

Ans. I did not receive a deed from Charles Powers myself, but I received one from John P. Cook, my attorney.

Int. 11. When did you receive a deed of the premises from John P. Cook?

Ans. The next day after the sale; I think it was the 21st of July, 1859.

Int. 12. Was the deed you received from Cook a deed from Cook to you, or a conveyance from Charles Powers to you?

Ans. A conveyance from Charles Powers, trustee, to L. C. Dessaint.

Int. 13. What, in your judgment, was the fair and reasonable value of Rose Bank farm in the spring and summer of 1859?

1243 (Objected to because it does not appear that the witness is qualified to testify upon the subject inquired of.)

Ans. Between $8,000 and $9,000.

Int. 14. Were you at any time advised or informed that Rose Bank farm had been sold or conveyed by James May to Antoine Le Claire? and, if yea, state when you first learned it, and from whom.

(Objected to as immaterial and calling for hearsay.)

Ans. I had no knowledge of it except from common talk in the street previous to the sale.

Int. 15. State who you heard speak of it previous to the sale.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I have already stated that I heard it in the street; from whom, I cannot remember.

Int. 16. Do you recollect of Antoine Le Claire's speaking to you about it at any time; and, if so, when?

1244 (Objected to for the same reasons as the 14th int.)

Ans. He never did in his lifetime.

Int. 17. Did John P. Cook ever say anything to you in regard to the sale of Rose Bank from May to Le Claire; and, if so, when did he first speak about it?

(Objected to for the same reasons as the 14th int.)

Ans. He never did.

Int. 18. Did you at any time hear that an agreement of settlement had been made or entered into between May & Le Claire; and, if yea, when did you first hear that and from whom?

(Objected to for the same reasons as the 14th int.)

Ans. I might have heard such a thing in the street, but I don't know anything about it.

Int. 19. Can you state whether you did or did not hear it?

(Objected to for the same reasons as the 14th int.)

1245 Ans. I shall have to make the same answer I did before; I have heard it in the street.

Int. 20. When did you first hear it?

Ans. I think as early as 1855 or 1856.

Int. 21. You had heard of it then before you bought Rose Bank, in July, 1859, had you?

(Objected to for the same reasons as the 14th int., and also because the form of the question is objectionable, first stating a fact and then asking whether it was so.)

Ans. I had heard that May was indebted to Le Claire on the settlement of this town, and nothing else, but not from the defendents in this case.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 22. Had you heard before this sale and deed from Powers to you in July, 1859, that May and Le Claire had entred into an agreement of settlement?

(Objected to for the same reasons as the 14th int., & also for

1246 vagueness & uncertainty, not specifying the kind of settlement referred to, or what it was a settlement of.)

Ans. I have heard it in the street as I have before stated, but having no interest in the matter I paid no attention to it.

(All that part of this answer after the word "stated" objected by complainant as not responsive to the question.)

Int. 23. Can you now mention the name of any person from whom you heard it?

Ans. I cannot.

Int. 24. Did you hear it from only one or from several?

Ans. Same answer.

Int. 25. Did you in 1859, and before the sale of Rose Bank farm by Charles Powers, either in person or by attorney, make an agreement that in case Rose Bank farm, at the sale, was struck off to you, you would pay to Powers a certain sum and perform certain conditions? and if any such agreement was made, state what it was.

1247 Ans. I did at the time of the sale, between one and three o'clock; I told John P. Cook, my attorney at the time, that the amount of mortgage against the farm was more than I did value the farm, and

if John P. Cook would see that the farm was sold according to the law, that I would give the amount that Powers claimed against the farm, providing I was not detered from buying it at the highest bid, and John P. Cook said my offer had been accepted at the time of sale; that is the only bargain that did exist between me and the party.

Int. 26. Do you mean by your last answer to say that you first spoke to Cook about it between one & three o'clock on the day of sale?

Ans. I consulted him in the matter at the time of sale, here in the court-house.

(Answer objected to by complainant as not responsive.)

Int. 27. Do you mean by your answer to question 25 that the first time you spoke to Cook in regard to it was between one & three o'clock on the day of sale?

1248 Ans. I mean that I never spoke to Mr. Cook, as my attorney in the case, only on the day of sale?

Int. 28. Now, haden't you, before the day of sale, had a conversation with Mr. Cook, as your attorney, in regard to it?

Ans. Never.

Int. 29. Did you not some three, four, or five days before the sale call upon John P. Cook and ask him, as your attorney, to go and see Powers and ascertain upon what terms you could buy Rose Bank farm at the sale?

Ans. Not that I remember, sir.

Int. 30. After you spoke to Cook about it on the day of sale, as stated by you, state whether he saw Powers in regard to it.

Ans. He saw Powers on the court-house steps or in the hall; have forgot which; I guess it was in the hall.

Int. 31. Did he then, after seeing Powers, tell you what Powers said?

1249 Ans. He said that Powers accepted my offer to him.

Int. 32. Under this agreement, in case you bid off the farm for less than the deed of trust, did you agree to pay the balance due on the deed?

Ans. My lawyer did.

Int. 33. Was there also a mortgage to one Kettle on the premises, which was an older lien than the deed of trust?

Ans. It was sold subject to that mortgage.

Int. 34. In this agreement between you & Powers, what was to be done with that mortgage in case you bid off the premises?

Ans. I presume if I had kept the land it would have been subject to pay that mortgage.

Int. 35. Was there any agreement between you and Powers that in case you bid off the premises that mortgage should be assigned to you?

1250 Ans. Not that I know of; he only told me that there was a mortgage against it previous to his deed of trust.

Int. 36. Did Powers agree to assigne to you the deed of trust for the balance remaining due thereon in case you bid less than the full amount of it?

Ans. I think he did.

Int. 37. Did not Powers, in this agreement between you and him, expressly agree to assign this Kettle mortgage to you in case you bid off the premises at less than the amount due on the deed of trust?

Ans. He did not, because the mortgage was not due for three or four months after the sale, from what we understood.

Int. 38. Was there any agreement between you & Powers in regard to the mortgage or to the assignment thereof?

Ans. Not with me; if there was any, it must have been with my lawyer.

1251 Int. 39. Was not the whole agreement between you and Powers made through your attorney, John P. Cook?

Ans. It was, sir; to the best of my knowledge.

Int. 40. At this time, on the day of sale, when you told Cook on what terms you would bid on the property, after which he saw Powers in the court-house hall as stated by you, did Cook then report to you after he had seen Powers what Powers was willing to do?

Ans. He reported to me that he had made an arrangment with Powers and had accepted my proposition.

Int. 41. Did your proposition to Cook, which he made to Powers as directed by you, embrace any proposition in regard to the Kettle mortgage?

Ans. I understood it was a mortgage existing at the time. Mr. Cook said he would have the matter arranged right for me.

Int. 42. Did you authorize Cook to say anything to Powers in regard to that mortgage?

1252 Ans. Not really in regard to that mortgage, but he had full power to arrange the matter for me.

Int. 43. Did you tell Cook to see Powers, and tell him what you would do in case you bid off the premises.

(Objected to as being objectionable in point of form, the proper question being, "What did you tell Cook to do?")

Ans. I told Mr. Cook I would buy the premises if I could buy it without Mr. Powers bidding against me particularly. He went, and told Powers what I would do in the matter, and I suppose they made the agreement.

Int. 44. You state in answer to int. 40, that Cook reported to you that he had seen Powers, and that Powers had accepted your proposition. Now, state in detail what that proposition was that you authorized Cook to make to Powers, and which he said Powers had accepted.

Ans. As near as I recollect at this time, I was to bid on the 1253 property to a certain amount, and if it was knocked down to me for less than the amount of the deed of trust, that I would pay him for the full amount of the deed of trust, and would buy the property as the highest bidder.

Int. 45. Does your last answer contain your entire proposition which you authorized Cook to make to Powers?

Ans. In substance, I guess it does. Cook was authorized to settle the whole matter, if the amount bid did not come up to the amount of the note. The balance was to be arranged between Mr. Cook and Mr. Powers.

Int. 46. Didn't you, at the same time, authorize Cook to state to Powers that in case you became the purchaser at the sale under the trust deed, that you would purchase the Kettle mortgage, and pay the amount of that, in case Powers would procure the mortgage to be transfered or assigned to you?

Ans. I am unable to say whether I did or not.

1254 Int. 47. What is your best recollection on that subject?

Ans. I recollect it was a mortgage existing against the property, and I turned the whole thing over to Mr. Cook, at the time of the sale, to attend to it for me.

Int. 48. Did Cook tell you when he reported to you that Powers ac-

cepted your proposition, what Powers was willing to do in regard to the Kettle mortgage?

Ans. I can't say that I remember in particular about that mortgage, sir.

Int. 49. Did you bid in Rose Bank at the sale, with the understanding on your part that you was to purchase the Kettle mortgage, and that Powers was to procure the same to be transfered and assigned to you?

Ans. I can't say whether Mr. Cook had agreed to pay that mortgage or not, but I understood it was sold subject to that mortgage.

(Answer objected to by complainant as not responsive to the question.)

1255 Int. 50. Int. 49 repeated.

Ans. Don't know what agreement Mr. Cook made at that time; as for myself, I don't remember anything about it just now.

Int. 51. Did you know at the time you bid under the deed of trust, upon what kind of terms, or under what agreement, you were bidding?

(Objected to as immaterial, and because the witness has already stated what said terms were, to the best of his recollection, and that repeatedly.)

Ans. I did in part from the report of Cook.

Int. 52. Do you mean to be understood by your last answer, that you bid on this property at the sale under the deed of trust, knowing only in part the agreement under which you bid?

Ans. I thought I knew the whole from the report of Mr. Cook at that time, but, just now, I cannot recollect. I mean the old mortgage

1256 the premises was sold subject to, whether Mr. Cook agreed to have it sold or transfered to me.

Int. 53. When Cook reported to you that Powers accepted your proposition, did he say anything to you about this Kettle mortgage, one way or the other?

Ans. He might and he might not.

Int. 54. Do you recollect whether he did or not?

Ans. I am unable to answer at this time. I do not recollect.

Int. 55. Do you mean to swear that you have now no recollection whether you did or did not bid off the farm under the trust-deed sale, upon the understanding that you was to purchase the Kettle mortgage, and that the same was to be assigned to you?

Ans. I knew that the mortgage existed; whether Mr. Cook agreed to have the mortgage assigned over or not, I do not know.

(This answer objected to by complainant as not responsive to the question.)

1257 Int. 56. Interogatory 55 repeated.

Ans. I don't remember as far as the purchaseing of the mortgage.

Int. 57. Did you, at the time you bid, know what the entire agreement was between you and Powers, made through your attorney Cook?

(Objected to because the question has been put and answered over and over again.)

Ans. I generally know what I am doing, when I purchase anything, (that is I think I know,) and Mr. Cook had full powers to settle the matter of the old mortgage after I bid the farm in.

(Answer objected by complainant as not responsive.)

Int. 58. Can you give any more direct and explicite answer to int. 57 than the one just given?

(Objected to for the same reasons as the last preceeding int.)

Ans. Not to my knowledge.

1258 Int. 59. Will you now answer whether, at the time of that sale, you knew what the agreement was?

(Objected to for the same reasons as the 57th int., and because it already appears from the witneses' testimony that he did not make the agreement in person, but through an attorney, and therefore cannot know what it was, except by report.)

Ans. I think I have stated that I knew at the time.

Int. 60. If you did know, why do you answer to question 55 that, "whether Mr. Cook agreed to have the mortgage assigned over or not, "I do not know?"

Ans. Because I can't say what took place between Mr. Cook & Mr. Powers.

Int. 61. Is that the only answer you have to give to the last question?

(Objected to because the witness having answered the previous question, the council is not entitled to ask him if that is the only answer he has to give to it.)

1259 Ans. All that I recollect at this time.

Int. 62. Did you swear to your answer in this case?

(Objected to because the answer shows for itself whether it was sworn to, and further because the question is immaterial to an answer.)

Ans. I guess I did swear.

Int. 63. Did you read it, or hear it read, before you swore to it?

(Objected to as immaterial.)

Ans. I think I did.

Int. 64. If you agreed if you bid off Rose Bank to pay the full amount of the deed of trust, why did you not bid the full amount at the sale?

Ans. Because I thought that the amount of the mortgage and deed of trust under which it was sold was more than I was willing to pay at the time.

Int. 65. Why then did you agree to pay the balance over and above the sum bid by you under the deed of trust, if you thought it was more than it was worth?

1260 Ans. First, I was wanting the farm; second, I thought I could make the difference against the complainant, May, if he had anything.

Int. 66. Is the chief reason, then, that you bid less than the amount due on the deed of trust, that you expected to hold and collect the balance due over and above your bid out of the complainant May?

Ans. That is what my lawyer told me could be done.

(Answer objected to by complainant as not responsive to this question.)

Int. 67. Int. 66 repeated.

Ans. That was one of the reasons conveyed to me by my lawyer at the time.

Int. 68. At the time you bid in the farm, under the deed of trust, did you regard it as worth the amount due on the deed of trust and the mortgage lien?

Ans. I don't think I did; but I had other reasons for buying.

1261 Int. 69. Can you now name the day on which the sale took place under the deed of trust?

Ans. I think it was on the 20th day of July, 1859. It might have been on the 21st; cannot say positively.

Int. 70. How did you first learn that the farm was advertized for sale?

Ans. It was published in one of the city papers.

Int. 71. Had you had any conversation with any of the defendents

about bidding on this property before you came to the court-house on the day of sale; and, if so, with which of them?

Ans. I had no conversation, as I stated before, with any of the defendents in this case, except John P. Cook, on the day of sale.

Int. 72. Did you bid off the premises at the sale?

Ans. I did.

Int. 73. For how much?

Ans. I think it was in the neighborhood of $5,000.

1262 Int. 74. How long after the day of sale before you got a deed?

Ans. I got the deed from Mr. Cook, I think, the next day.

Int. 75. How much did you pay for the farm?

Ans. I think I agreed to give $7,440, that was including all cost of advertizing & sale, which amount I paid to Mr. Cook for Mr. Powers.

Int. 76. To whom did you pay the money?

Ans. I think I paid it to my own lawyer, John P. Cook, who was to arrange the matter for me.

Int. 77. How?

Ans. By a check on the State Bank, Merchants' Branch, Davenport.

Int. 78. On what day?

Ans. On the 21st day of July, 1859.

1263 Int. 79. Did you on the same day deposite to your credit at the State Bank the check of Cook & Sargent, or one of said firm, for the sum of $1,640?

Ans. I did not.

Int. 80. Did you draw a check in your own name on that day on the firm of Cook & Sargent for the sum of $1,640, which was placed to your credit at the State Bank?

Ans. I did draw a check on Cook & Sargent for the amount specified, having money at that time at Cook & Sargent's for more than the amount of that check.

Int. 81. Do you know what was done with this check of $7,440 after you delivered it to John P. Cook?

Ans. I know that the check was paid at the bank, and that I got the deed for the farm on delivery of the check to Jno. P. Cook.

Int. 82. At or about the date of this check, did you make a loan of Cook and Sargent, which was placed to your credit at their banking-house?

1264 Ans. I never borrowed a dollar from them.

Int. 83. Do you recollect on the morning of the 21st of July, 1859, and before you received your deed, of showing to James May, in the banking-house of Cook & Sargent, in the presence of J. M. Gallagher, a check, and then saying to May, in the presence of Gallagher, holding up the check, that there was a check of $3,900 that you had just borrowed from Cook & Sargent to pay for the farm?

Ans. I never saw James May on the morning of the 21st, neither Gallagher; never showed them any such check, because I never had it.

Int. 84. Did you, on the 20th or 21st of July, 1859, see Capt. May, with or without J. M. Gallagher, at the banking-house of Cook & Sargent?

Ans. I saw him on the afternoon of the sale at the banking-house of Cook & Sargent, in the loby.

Int. 85. Who was in the bank, that you recollect, at the time?

1265 Ans. In the loby but me & Capt. May; I don't remember, but in the bank proper I presume the officers of the bank were there.

Int. 86. Was there any conversation passed between you and May at that time?

Ans. I think there was.

Int. 87. In regard to what?

Ans. In regard to the sale of the farm that day.

Int. 88. What was said?

(Objected to because it calls for the declaration of the complainant, which are not evidence in his favour.)

Ans. Capt. May said to me that I had bought the farm at the sale; that he would like to have me to throw it up; that he could make some arrangment with Powers to have the time extended; something to that effect.

Int. 89. At this time did May claim that this sale had been a fraud on him?

1266 (Objected to for the same reasons as the last preceeding interogatory, and also because the question is objectionable in form; the proper form of the question, if competent at all, being, What did May say?)

Ans. Not at that time to me. He only represented that it had been a loss to him, or something like that.

Int. 90. Did he not say at that time, in the presence of Gallagher and others, at the bank, that in the sale of this land there had been such a fraud purpetrated on him as he would not purpetrate for all the land in Scott County, or that in substance and effect?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. He might have said it there in the loby of the bank, without my paying any attention to it. I knew the capt. was excited, & I did not pay much attention to what he said.

Int. 91. Did he not at that time say, in substance, that he was ready to pay the money, and that Powers had been guilty of a fraud in allowing it to be sold?

1267 (Objected to because the complainant can't manufacture evidence in his own behalf by making statements, and then proving that he made them, and for the same reasons as question 89.)

Ans. Not to me. I never saw any money, or heard of any being offered.

(All after the word "me" objected to by complainant as not responsive to the question.)

The further taking of these depositions is here adjourned until tomorrow, Tuesday, March 1st, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MARCH 1ST, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment:

Int. 92. How long was it after the sale before you saw May at the banking-house of Cook & Sargent?

Ans. It must have been between the hours of 3 & 5 in the afternoon of the day of sale.

Int. 93. Where you at the office when Capt. May came there?

1268 Ans. Yes; I was there in the loby.

Int. 94. Who, if any one, came there with Capt. May at that time?

Ans. I don't know any one; it might be some one came with him, but I don't remember.

Int. 95. Name the persons that you recollect were in and about the banking-office at that time.

Ans. Being after banking hours, I don't know anybody that was there but Capt. May, with the exception that some of the members of the firm of Cook & Sargent may have been there.

Int. 96. Which of the members of the firm of Cook & Sargent were there at that time?

Ans. That I could not state, but if my recollection serves me right, John P. Cook must have been there.

Int. 97. Do you recollect that May was there in conversation with John P. Cook, and called you in from the back-room?

1269 Ans. I don't recollect anything of the kind, sir.

Int. 98. Which was at the bank first, you or May?

(Objected to because the question has already been put and answered.)

Ans. He might have been there before me; as I have already said, he came to me in the bank.

Int. 99. Did he commence the conversation with you, or you with him?

Ans. He called me towards one of the side windows in the loby and addressed me in the matters of the sale of the farm.

Int. 100. What did he say?

(Objected to because the declaration of the complainant are not competent in evidence in his own behalf.)

Ans. I have already stated that in my former answer.

Int. 101. What did he say? (Int. 100 repeated.)

1270 (Objected to for the same reasons as the last preceeding int., and also because the question has been already answered, and the witness cannot be required to answer a question as often as the council chooses to repeat it to him.)

Ans. He said he wanted me not to take the deed to that farm, or throw it up; that it was a damage to him, or something to that effect.

Int. 102. Was that all that was said by him?

(Objected to for the same reasons as int. 100.)

Ans. He might have made some other remark. The capt. was somewhat excited, as I stated before, and I paid no further attention to his remarks.

Int. 103. What did you say to him in reply to this remark—that he wished you would not take the deed?

Ans. I told him that I had bought the farm at the sale, and would not give it up.

Int. 164. Did he not threaten you then that he would commence a suit to set asside the sale?

1271 (Objected to as immaterial, and because the complainant's declarations or threats are not evidence in his favour.)

Ans. If he did, I don't remember.

Int. 105. Did he say anything at all in reply to your remark; if so, what?

(Objected to because the plantiff's declarations are not evidense in his favour.)

Ans. He did. He first said that he belonged to the Catholic church, and knowing that I was a member, he dident think I would take that advantage of the sale. I told Capt. May then that he could not influance me by those remarks, nor influence me to do away from what I knew was right, and turned away and did not listen to what he said afterwards.

Int. 106. Have you now given all the conversation between you and Capt. May on that occasion?

Ans. As near as I can recollect, sir.

Int. 107. You say that Capt. May was excited. Was he excited

1272 when the conversation first commenced?

(Objected to because the complainant's excitment, or the contrary, is immaterial to any of the issues in this cause.)

Ans. I don't think he was at the commencement, but when I gave him my answer, that the religion had nothing to do with what I thought was right, then he seemed to get excited and used some abusive language, to which I paid no attention.

Int. 108. Was he at all excited at your refusal to give up your bid?

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. That was about the time he was getting excited, at my refusal to give up the bid.

Int. 109. Did you have more than one conversation with May on the subject of the sale and the giving up of your bid, at the banking-house of Cook & Sargent?

Ans. Only one, if I remember right.

1273 Int. 110. Was not that conversation on the morning of the 21st of July, and not on the evening of the 20th?

Ans. It was on the evening of the same day that the sale took place.

Int. 111. Did you not have a conversation on the subject with May at the banking-house of Cook & Sargent on the morning of the day after the sale, in the presence of J. M. Gallagher, and while John L. Coffin, Ebenezer Cook, and John P. Cook were in the bank?

(Objected to because the question has been already directly answered by the witness at least twice.)

Ans. I never spoke to Capt. May since I gave him my refusal on the day of the sale, that I remember.

Int. 112. At the time you drew this check of $7,440 on the State Bank, had you that amount on deposite at the bank, outside of this check of $1,640?

(Objected to as immaterial.)

Ans. I had not.

1274 Int. 113. How much had you at that time on deposite at that Cook & Sargent's?

Ans. I had a balance on account $1,916 28, or thereabouts.

Int. 114. Why did you not deliver the $1,640 check directly to Cook, instead of depositing it at the State Bank?

Ans. Because I did not want to overdraw on the State Bank, and I gave it to the State Bank to make my account right.

Int. 115. Would you have overdrawn on the State Bank if you had drawn a check on that bank for $5,800?

Ans. I don't think I would.

Int. 116. Why did you not then draw your check on the State Bank for the balance you had there, say $5,800, and deliver that to Cook with your check on Cook and Sargent for $1,640, instead of drawing a check on Cook & Sargent for the last amount, then depositing that

1275 cheque at the State Bank, and drawing one check on that bank for the whole?

Ans. I suppose that I must have give the check to John P. Cook on the State Bank for the whole amount, and then went to the bank and told Mr. Woodward, the cashier, that I had drawn on the bank for $7,400 and some odd dollars, and he told me, in looking over the balance-book, that I would overdraw to the amount of $1,600, to which, to make my account good, I gave him that check on the firm of Cook & Sargent.

Int. 117. Did you not know at the time you drew the check for the sum of $7,440 what amount you had to your credit at the State Bank?

Ans. Not exactly, at that time; I don't expect I could say within $1,000.

Int. 118. Did you suppose that you had the full amount of that check?

1276 Ans. I knew that the check would be honourd at the bank. (Answer objected to as not responsive.)

Int. 119. Interogatory 118 repeated.

Ans. I don't remember whether I thought so at the time.

Int. 120. Was the $7,440 check delivered to Cook before or after you found out in this conversation with Woodward that that check would overdraw your account?

Ans. I presume it was delivered to Mr. Cook first.

Int. 121. Do you recollect now how that was?

Ans. I have already stated that in a previous answer. I gave the check to Cook before the conversation I had with Woodward.

Int. 122. How long was this conversation with Woodward after you drew this $7,440 check?

1277 Ans. It could not have been very long. It must have been the same afternoon that I drew it, and before it was presented to the bank for payment.

Int. 123. Do you not know that John P. Cook never delivered the $7,440 check to Powers, but that he paid Powers the sum of $2,000 in bank-notes, $1,500 in check of Tallman, Powers & McLean, and the balance in check on Cook & Sargent?

Ans. I don't know anything about that transaction.

Int. 124. Did you not see a check of Cook & Sargent's drawn on themselves for about $3,900 at the time you saw Capt. May at the banking-house of Cook & Sargent, and which Cook had drawn for the purpose of delivering to Powers in part payment?

Ans. Never saw any such check.

Int. 125. Have you now present the check for $7,440 on the State Bank mentioned by you?

Ans. I have.

1278 Int. 126. Will you state in whose handwriting the body of that check is filled up?

Ans. I believe it was filled up by Mr. De Francis, one of the clerks of John P. Cook's law-office.

Int. 127. Where was the check drawn?

Ans. It was drawn in the office of Cook & Sargent, at my own request.

(All after the word Sargent objected to as not responsive.)

Int. 128. Will you look at the check and state whether the words in the body of it, "John P. Cook," are not in the handwriting of John P. Cook?

Ans. I could not state posative, not being very well acquainted with his handwriting; but the check was presented to me, with the deed, to sign in the office of John P. Cook, and I thought it was filled out.

(All this answer after the word writing, in the third line, objected to by complainant as not responsive to the question.)

1279 Int. 129. State whether the said words, John P. Cook, are in the same or a different handwriting from that in which the body of the cheque is filled out.

(Objected because it is immaterial, and because it relates to the contents of a paper which is not called for, nor made a part of the deposition.)

Ans. I could not state, sir.

Int. 130. Was this check delivered by you at the time, or before or after you received the deed executed by Powers?

Ans. I believe the check was delivered before, within a few minuits; maybe an hour.

Int. 131. Who delivered the deed to you?

Ans. Either Cook or De France, his clerk.

Int. 132. Where?

Ans. At the office of the banking-house.

Int. 133. When?

1280 Ans. I could not state the hour or the date exactly; it was in the neighborhood of the 21st, I think.

Int. 134. At what hour of the day?

Ans. I could not state; I have not got the deed in my possession.

Int. 135. Do you know in whose handwriting the body of this deed was? If so, state.

Ans. I could not say positive; I think it was in Mr. De Francis's.

Int. 136. What did you do with the deed after it was delivered to you?

Ans. I took it into my possession, I suppose.

Int. 137. Have you it in your possession now?

Ans. Not with me.

Int. 138. Do you know where it is?

Ans. I think I handed it to Mr. Rogers, my solicitor, not long ago.

1281 Int. 139. How long ago?

Ans. About a couple of weeks ago.

Int. 140. For what purpose was this deed handed to Mr. Rogers?

Ans. I saw the notice of sale in the newspaper that was attached to the deed, and I did not know but what Mr. Rogers might want it for reference.

Int. 141. You knew that that notice was annexed to the deed when you received it, did you not?

(Objected to as immaterial and as improper in form.)

Ans. I think it was there.

Int. 142. For what purpose did you think that Rogers would need it as a reference?

(Objected to as frivelous.)

Ans. Because it had reference to a date that I thought might be useful.

Int. 143. After the sale and before the time you got this deed,

1282 did you have any conversation with John P. Cook in respect to the Kittle mortgage?

Ans. I don't remember that I had.

Int. 144. Did you convey Rose Bank to anybody; and, if so, to whom & when?

Ans. I sold my right to E. Cook about a week after I bought it.

Int. 145. Did you execute a conveyance of the premises to Ebenezer Cook?

Ans. I did; a quitclaim deed, I think.

Int. 146. For what consideration?

Ans. Seven thousand six hundred & ninety dollars, I think it was; at least, it was $250 more than I paid.

Int. 147. How was the consideration paid to you?

Ans. By putting the money to my credit at the banking-house of Cook & Sargent, at some eight or ten days before I wanted to

1283 draw it; he having no money to his individual credit at the time in the bank, wanted that credit.

Int. 148. Did you after that time draw that amount from the bank of Cook & Sargent?

Ans. I did from time to time, as I wanted it.

Int. 149. Had you any deposits with them at the time of their failure in December, 1859?

Ans. I had to some extent.

Int. 150. What amount?

Ans. Twelve hundred and seven dollars.

Int. 151. Did you make any deposits at the banking-house of Cook & Sargent after the time you executed this deed to Ebenezer Cook?

Ans. I deposited the $7,000 which I received from Mr. Cook, or which was put to my credit. It was placed to my credit on the 4th of August.

(Last part of the answer objected by complainant as not responsive to the question.)

1284 Int. 152. Can you tell the amount of the last check you drew on Cook & Sargent before their failure; and the date of such check?

Ans. I can't exactly tell; there is one check for $5,000, drawn on the 15th day of August, 1859, payable to my own order. I am not certain that this was the last check. There seems to have been a check for $47 82 drawn afterwards.

Int. 153. Did you draw any other check on that house, after the deed of Cook, except these two?

Ans. I must have drawn in the neighbourhood of about eight in small amounts, except one for $600.

Int. 154. Was this $1,267, which you had on deposite with Cook & Sargent at the time of their failure, ever received by you?

Ans. I received $1,130 and some odd dollars by taking the note of the city of Davenport which they had.

1285 Int. 155. When?

Ans. I received the note of the city some few days after their failure, a very short time afterwards, from the look of the check which I gave them to balance my account in the bank.

Int. 156. Was this before or after Cook & Sargent executed their assignment?

Ans. Before.

Int. 157. Did you receive the note of the city from Cook & Sargent at its face, or for less than its face?

Ans. I was glad to take it for the face.

Int. 158. What was the amount of the note?

Ans. I think the note was in the neighbourhood of about $3,000.

Int. 159. How did you pay them the balance of this note over and above the amount of your deposits with them?

Ans. Lorenzo Schriker got the balance of the note. We divided

1286 the amount of that note between us according to the amount of our deposits; it was handed over to us both.

Int. 160. To whom was this note payable?

Ans. That I could not say, whether it was payable to Cook & Sargent or somebody else.

Int. 161. Do you know what became of it?

Ans. It was settled by the city's taking it for taxes; that is, my part of it; as for Mr. Schricker's part, I can't answer.

Int. 162. When did the city take it for taxes?

Ans. During the fall of 1859 and the winter of 1860.

Int. 163. Was it for taxes that you owed the city or other persons?

Ans. Part for my tax, part for Baily Davenport, Henry B. Hoffman, & others. I paid their tax and took their note for it on time.

Int. 164. What others do you refer to in your last answer? Name them.

1287 Ans. I think Joshua Burrs—I took part of it from him in groceries; & Wm. C. Wadsworth—I took part of it in dry goods. Further I hardly remember; only I know that I have got my pay from the city.

Int. 165. Have you your bank-book with you in which your accounts were kept with Cook & Sargent?

Ans. I have one from Feb'y, 1859, to December 30, 1859.

Int. 166. Does that show the date of your checks upon and deposits with the bank?

Ans. It shows the date of the deposits, but not generally the date of the checks.

Int. 167. If the book does not show the date of the checks, how are you enabled to state, as you do in answer to int. 153, "that you drew about eight checks in small amounts on the house of Cook & Sargent, after your deed to Cook?"

1288 Ans. By having reference to my book that the checks are generally entered from the day they are drawn.

Int. 168. Does your book show the dates of the eight several checks mentioned by you in answer to question 153?

Ans. It does not show the dates, but I am quite certain they were drawn since the sale to Cook.

(All of this answer after the word "dates" objected to by complainant as not responsive to the question.)

Int. 169. If your book does not show the dates, how are you enabled to swear that they were drawn after the deed to Cook, instead of before?

Ans. Because my book was balanced on the 20th day of July, 1859.

Int. 170. Is that the only reason that you can give?

Ans. It is, to the best of my knowledge.

Int. 171. Do you not know that the bank-books kept by bankers with their depositors, do not show the dates of the checks, but the dates that they are presented for payment.

1289 (Objected to as assuming a fact not proved.)

Ans. It might be; but I am not able to state for others. It was not so with me; being connected with the bank, I never overdrew, but always had my checks to come in. I never kept a regular check-book.

Int. 172. Did you sometimes draw checks on Cook & Sargent in favour of third persons?

Ans. I have.

Int. 173. Do you know that those checks were always presented on the day of their date, or were some of them presented a day or two after?

Ans. Generally presented on the same day.

Int. 174. How are you able to state that?

Ans. By enquiring from day to day of my son-in-law, who was book-keeper in the banking-house of Cook & Sargent.

Int. 175. When did you learn from him that the checks you

1290 drew on that bank were presented on the day they were drawn?

Ans. He was stopping at my house during that time; I would make inquiry from time to time if such and such checks had been presented. Sometimes he would tell me himself.

Int. 176. Does the bank-book kept by Cook & Sargent, of your accounts with them, show the dates of the other checks drawn by you on them, with the exception of the eight mentioned in your answer to question 153?

Ans. It does not; no more than by balanceing the book several times during the year.

Int. 177. Will you produce before the examiner the bank-book of Cook & Sargent, with you, containing your account with them from February to the 30th of December, 1859, for the purpose of having a copy made thereof as an exhibit?

Ans. I have no objections, and I here produce said book.

1291 (Said book is annexed by copy marked Exhibit "U," so far as called for by the question.

The said exhibit is objected to by the defendents as uselessly incumbering the record with immaterial matters.)

Int. 178. Was there anything said about this Kettle mortgage at the time you executed this deed to Ebenezer Cook?

Ans. No.

Int. 179. Who was present at the time of your negotiation with, and sale of this land to, Ebenezer Cook?

Ans. I don't know of anybody but him that was present, sir.

Int. 180. Who drew or filed up the deed?

Ans. I cannot say.

Int. 181. Where was it drawn?

Ans. It might have been drawn in the office of John P. Cook, but I can't say.

1292 Int. 182. Was it acknowledged by you?

Ans. It was.

Int. 183. Before whom?

Ans. I don't remember.

Int. 184. Was John P. Cook present at the time of this sale?

Ans. I have no recollection.

Int. 185. Who first spoke about this sale of Rose Bank to Ebenezer Cook, you or he?

Ans. I think it was Mr. Cook.

Int. 186. What did he say about it?

Ans. He made the remark that he thought I had a good bargain. I told him I didn't think it was such a great bargain. Then he said, "I will give you $250 more than you paid;" that he wanted it for some friend of his in the East—or something to that effect. I asked him then

1293 if he would give me a few days to consider on it; he then said that he was going on east the next day, and he would like to have me give him an answer before he left. And I think Mr. Cook postponed his trip for a day or two to get an answer from me.

Int. 187. Have you given in your last answer all of the first conversation between you and Cook in regard to selling to him the farm?

Ans. I think I did.

Int. 188. How long was this before you executed the deed?

Ans. It might be about a couple of days.

Int. 189. Where was this conversation?

Ans. I guess in the banking-house of Cook & Sargent, or at this office.

Int. 190. Was John P. Cook present?

(Objected to because the question has been already put and answered.)

Ans. I do not remember.

1294 Int. 191. Did you, at the time you executed this deed, sign or execute any other papers to Ebenezer Cook?

Ans. I did not.

Int. 192. Did you, before or after its execution, execute to Ebenezer Cook any other paper or instrument in writing relating directly or indirectly to Rose Bank?

Ans. I don't remember of any.

Int. 193. Did Charles Powers execute to you any other conveyance, or paper, or instrument in writing, except the deed of which you have before spoken?

(Objected to for indefinateness and uncertainty.)

Ans. Not to me.

Int. 194. Did he execute any conveyance, or paper, or instrument in writing to any person for your benefit?

(Objected to for the same reasons as the last preceeding interogatory.)

1295 Ans. He never did; no more than the trustee's deed, and a settlement of those mortgages with Mr. Cook; I know of no other.

Int. 195. What mortgage do you refer to in you last answer?

Ans. I refer to the last mortgage; that Mr. Cook said he would have that matter attended right for me.

Int. 196. Do you mean the Kettle mortgage?

Ans. I don't remember the name of the persons who held the mortgage.

Int. 197. Do you mean the mortgage that you have stated Rose Bank was to be sold subject to by Powers?

Ans. I don't mean no mortgage in particular; but I suppose it has reference to that mortgage.

Int. 198. Was there any paper or written instrument in regard to that prior mortgage executed by Powers to you or John P. Cook?

Ans. None to me, & none to Cook, that I know of.

1296 Int. 199. Do you mean now to be understood that no other instrument in writing was executed by Powers, either to you or John P. Cook, except the deed under the trustee's sale?

Ans. I never saw any.

Int. 200. Do you know, or have you any information, that any other was executed by Powers?

Ans. I never had any knowledge of any.

Int. 201. Have you ever been informed that any other was executed by Powers, either to you or Cook?

(Objected to as calling for hearsay.)

Ans. I had no information, sir.

Int. 202. Were any other papers or instruments in writing delivered to you at the time you received this deed executed by Powers?

Ans. I don't know of any.

Int. 203. Was the deed which you executed to Cook delivered

1297 on the day it bears date or afterwards?

Ans. I think it was delivered at its date.

Int. 204. Did you buy Rose Bank at this sale, under the trust deed, with the view of keeping and improving it, or with a view to speculation?

(Objected to because the question is objectionable in point of form, the proper question being, "For what purpose did you buy it?")

Ans. My view was to improve it at the time, sir.

Int. 205. Why then did you sell it so soon?

Ans. By examining the fence and buildings I found it would cost to much money to put it in order.

Int. 206. Is that the only reason that you can give in answer to the last question?

Ans. And the making of $250.

Int. 207. Any other reason?

(Objected to as immaterial.)

1298 Ans. That is in substance the whole.

Int. 208. In your answer in this case you deny upon information and belief that any such conspericy, confederation, or agreement as that charged in complainant's bill, on the part of Le Claire, or any or either of the defendents, ever existed or took place; from whom did you receive such information, and when?

(Objected to as totally immaterial and frivelous; the witneses' information as to matters of which he has no personal knowledge, being mear hearsay, and not competent in evidence for any purpose.)

Ans. Because I never heard of any until I see it in the public prints published by somebody, (I don't know who it was,) some time after this declaration in my answer.

Int. 209. Can you give any more definate or explicit answer to the last question?

(Objected to because the last question is incompetent and frivelous, and this one is equally so.)

Ans. That is as near as I remember.

1299 The further taking of these depositions is here adjourned until 9 o'clock a. m., to-morrow, March 2nd.

R. LINDERMAN, *Com'r.*

MARCH 2ND, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 210. Was this note against the city which you say that you & Schricker received from Cook & Sargent, delivered by Cook & Sargent to you or Schricker, or either of you?

Ans. It was delivered, I think, to both parties; it not being quite the full amount of Cook & Sargent's liabilities to us.

(All after the word "parties," in the first line of this answer, objected to by complainant as not responsive.)

Int. 211. When you paid the taxes of yourself and others, as stated by you, did you credit the amount of the tax or taxes on the note?

Ans. I don't think it was; I think it was fixed with the city treasurer and the marshall.

1300 Int. 212. How was it fixed with the city treasurer and the marshall?

Ans. I think the city treasurer assumed the balance of the amount due me, and the balance of the note Mr. Schricker received, I think, to the best of my knowledge from the city treasurer; I think he was city treasurer at the time.

Int. 213. What did you do with the note; to whom did you deliver it or surrender it?

Ans. Lorenzo Schricker had the note in his possession all the time.

Int. 214. Who was city treasurer of Davenport at that time?

Ans. I think it was Lorenzo Schricker, although I am not positive.

Int. 215. Don't you recollect with whom you made the arrangments to receive those taxes in payment of the note?

Ans. I think it was made with the marshall and treasurer.

1301 Int. 216. Give the names of the persons with whom such arrangment was made.

Ans. I think it was John Bechtell, as marshall, and Lorenzo Schricker, as treasurer, to the best of my recolection.

Int. 217. Did you receive from the city treasurer at the time any certificate or writing, showing the amount due you from the city on the note?

Ans. I could not say to a certainty.

Int. 218. Do you know what finally became of this note?

Ans. I do not, after that transaction.

Int. 219. Was it in Lorenzo Schricker' possession the last that you knew of it?

Ans. I think it was.

Int. 220. Can you give the amount or sum at which you received this note, or the interest you received in it, from Cook & Sargent?

1302 Ans. I think I can; at the sum of eleven hundred eighty-four $\frac{16}{100}$ ($1,184 16) dollars, or thereabouts.

Int. 221. Did you make this arrangment in respect to this note yourself personally with the firm of Cook & Sargent?

Ans. I did.

Int. 222. Are you able to state the day this arrangment was made?

Ans. I think it was on the 16th of December, 1859.

Int. 223. Did you, on the day of the agreement, draw checks upon the firm of Cook & Sargent for the amount at which you received this note?

Ans. I think I did.

Int. 224. How many checks, and on what date were they drawn?

Ans. I signed three checks on December the 16th, 1859.

1303 Int. 225. Of what amounts were the several checks?

Ans. One for $47 82, one for $1,125, & one for $11 34; making in all $1,184 16.

Int. 226. Were these checks all payable to yourself, or were they payable to other persons?

Ans. I can't say by the face of the checks, but I think they were payable to Lorenzo Schriker. The checks don't say to whom they are payable, only to bearer.

Int. 227. Is not one of these checks drawn, "Pay to L. S., or bearer?"

Ans. There is one of the checks that might be called L. S., or bearer; still it is cut by the punching so that I can hardly tell.

Int. 228. If these checks were all drawn to Schricker and on the same day, why were these three checks drawn instead of one?

Ans. Lorenzo Schricker was to take the amount of the indebt-

1304 edness due from Cook & Sargent to him first; Mr. James S. McKenzie, book-keeper, then at the bank, drew those checks, and I signed them, which was the balance due me on the note, and for which these checks were drawn; I left the matter with my son-in-law, Mr. James S. McKenzie.

Int. 229. Can you give any more definate or explicite reasons why three checks were drawn instead of one, than those given in your last answer?

Ans. If my memory serves me right, I think the interest of the city note hadn't been properly accounted, and that is why Cook & Sargent did not want to give up the note until it was settled, interest and all.

Int. 230. Do you mean by your last answer that one of these three checks was for interest on this city note which Cook & Sargent transfered to you & Schricker?

Ans. I couldn't say positive.

Int. 231. Can you give any other reasons than those already given to your answers to the three preceeding interogatories, why three

1305 checks were drawn instead of one?

Ans. The first check was given for $1,125; my son-in-law finding afterwards, during the same day, that that check of $1,125 did not balance the city note, presented to me this check of $47 82, which I signed, and some time afterward, on the same day, he discovered that

there had been a mistake of some interest of $11 34, as near as I recollect from what he said to me, and drew a check for that amount and I signed it; my son-in-law made the remark that I would get $11 34 more, as he had made a mistake about the interest.

Int. 232. If the reasons stated in your last answer are the true reasons why three checks were given, why did you not state them in answer to question 228?

Ans. I did not know that I could explain the matter as I have in the last answer; I did not understand question 228.

Int. 233. Were you on the 16th of December, the day these checks were drawn, at the banking-house of Cook & Sargent more than once?

1306 Ans. I think I was.

Int. 234. How many times?

Ans. Three or four times, I suppose; I don't remember exactly.

Int. 235. State whether those checks were drawn and signed, all of them, on the same visite to the bank on that day or on different ones.

Ans. I think they were signed at different times; it might have been on the same visit, but not at the same time, as near as I remember.

Int. 236. If they were all signed at the same visit, were they signed the first time you went to the bank, on that day, or afterwards?

Ans. I don't remember that they were all signed on the same visit, and can't say whether it was on the first or the last visit, having had occasion to go there several times on that day to see about the matter; I am not able to state.

1307 Int. 237. Who figured up the amount that was coming to you as your share on this note?

Ans. It was done by Mr. McKenzie.

Int. 238. In figureing it up, do you mean to be understood that he made two errors, which were subsequently corrected by the giving two other checks?

Ans. That is what I understood.

Int. 239. Do you recollect the day of the month that Cook & Sargent suspended payment and closed their doors?

Ans. I don't remember.

Int. 240. Was it before or after the date of these three checks?

Ans. They closed their doors before I gave the checks; I could not say whether the same day or a day or two before I gave the checks.

1308 Int. 241. Do you not now recollect that they were open and paid checks after the date of these three checks, and until the 20th day of December, 1859?

Ans. I don't know. I think they closed their front-door the same day the checks were drawn, or before; providing those checks were dated right.

Int. 242. Was there any other instrument of writing executed between Cook & yourself and Shricker on the day those checks were drawn, which would enable you to state the day on which the transaction occured?

Ans. I don't remember to have seen any.

Int. 243. Was John P. Cook or Ebenezer Cook, one or both, present at the time these checks were drawn?

Ans. I could not say which, but I know there was one of the members of the firm.

Int. 244. Was there on that day, while you were there at the bank, a deed drawn and executed by Ebenezer Cook, conveying Rose Bank to George L. Davenport?

Ans. I have no knowledge of it.

1309 Int. 245. Did you see George L. Davenport at the banking-house of Cook & Sargent on the day you signed these three checks?

Ans. I don't remember. I may have seen him and not know it.

Int. 246. Do you recollect of seeing Antoine Le Claire there on that day?

Ans. I do not.

Int. 247. Do you not know that about the time or shortly after this Cook & Sargent closed their banking-house, the firm, or some or one of them, conveyed to Antoine Le Claire large quantities of real estate?

(Objected to as immaterial, and because if such conveyance was made there is better evidence of it.)

Ans. I have heard they did, but never saw no deed.

Int. 248. Was any portion of this real estate that you understood was conveyed to Le Claire by them subsequently conveyed to you by Le Claire?

(Objected to as immaterial.)

1310 Ans. Some of it was for the benefit of the State Bank.

Int. 249. State whether or not, in July and December, 1859, you were a director of the branch of the State Bank at Davenport.

Ans. I was.

Int. 250. Were Ebenezer Cook, Antoine Le Claire, and George L. Davenport also directors of that bank at the time?

Ans. As to Antoine Le Claire, I could not state; George L. Davenport and Ebenezer Cook were.

Int. 251. Was Lorenzo Schrieker a director of that bank at the time?

Ans. Yes.

Int. 252. State who were present at the sale under the trust deed by Powers on the 20th of July, 1859.

Ans. Powers himself, Congdon, Judge Mitchell, my attorney John P. Cook; and, if others, I don't remember.

1311 Int. 253. Was Joseph A. Le Claire there?

Ans. Since the name of Joseph A. Le Claire is mentioned, I think he was.

Int. 254. Did Powers, before he commenced the sale, state that the purchaser of the premises at the sale must pay the amount of his bid by 5 o'clock on the afternoon of that day?

(Objected to as immaterial and objectionable in form, the proper form of the question being, if competent at all, "What did Powers say before commencing the sale?")

Ans. I don't remember that he used that language. My recollection is that it was to be a cash sale.

Int. 255. Was not one of the terms of sale upon which Powers offered the premises, that the sale would be for cash, to be paid by the purchaser at or before 5 o'clock in the afternoon of that day?

Ans. If it had been one of the terms of sale I was just as ready to pay at 5 o'clock, if I became the purchaser, provided the deed could have been ready for me.

1312 (This answer objected to by complainant as not responsive to the question.)

Int. 256. Int. 255 repeated.

Ans. I understood it was to be for cash, but as to the hour of payment particularly, I could not state, as my memory does not serve me right.

Int. 257. Was not one of the terms stated by Powers before he opened the sale, that unless the purchaser paid the cash at his office in Daven-

port before 5 o'clock of that afternoon, he reserved to himself the wright of considering the highest bid void, and of making the deed to the next highest bidder, who should pay the cash, and who he should consider the highest bone-fide bidder?

Ans. I don't remember any such language.

Int. 258. Did he state that as one of the terms, in substance?

Ans. As I said before, I don't remember any such language.

(Objected to by comp't as not responsive.)

1313 Int. 259. Did Powers, before the sale, say anything about when the money was to be paid by the purchaser?

Ans. I understood him to say that the sale was cash, and having John P. Cook here at the sale to transact the business for me, as my attorney, I did not pay much attention to Mr. Powers' stipulation of the sale. He might have said it, but I don't remember it.

Int. 260. Did you make more than one bid on the property at the sale?

Ans. I think I did.

Int. 261. How many?

Ans. I can't exactly say.

Int. 262. How many do you recollect of making?

Ans. I don't think it was less than two. Being four or five years ago, I can't tax my memory to that extent.

Int. 263. Who else bid?

1314 Ans. I think Judge Mitchell; and if others, I cannot state.

Int. 264. Was there an agreement or understanding between you and John P. Cook as to the amount which you should bid for the property?

Ans. I only authorized John P. Cook to make such an arrangement with Mr. Powers; to what amount just now I do not remember. Mr. Cook told me that we were to give him the amount of the note.

(The foregoing answer is corrected by the witnes, and he answers as follows:)

I think there was.

Int. 265. What amount was it understood, between you and Cook, that you should bid it off for?

Ans. I think the amount of the note & trust deed under which it was sold. That is, if there was any bidder that run it up on me to that amount. This was between me and my lawyer.

1315 Int. 266. Was there any understanding between you & John P. Cook that if he made any bids on the premises, and the premises should be struck off to him, that you should have the benefit of his bid?

Ans. I am unable to say, sir.

Int. 267. If John P. Cook made any bids on the premises at the sale, did he bid for you, or for himself?

(Objected to because it puts a hypothetical case to the witness, and asks him what was the fact, if such case existed, which is not a proper mode of examining a witness.)

Ans. I cannot say.

Int. 268. Can you give any reason why you did not pay the money on the day of the sale?

(Objected to as immaterial.)

Ans. I suppose the deed was not ready.

Int. 269. Can you give any other reason than that?

Ans. It might have been postponed on the part of my attorney,

1316 for all I know, or Mr. Powers; I can't say which.

Int. 270. Was there any agreement made between you & Powers & John P. Cook on the day of the sale, to your knowledge, that the payment and the execution of the deed for any reason should be postponed until the next day?

Ans. I have no knowledge of such.

Int. 271. Did you give your consent either to Powers or to Cook that the payment and the delivery of the deed should be postponed or defered until the next day?

Ans. I might have approved of it, if Mr. Cook requested me.

Int. 272. Did M. Cook request you?

Ans. I do not think it was on the day of the sale.

Int. 273. Did he request you on any other day to postpone the payment & the delivery of the deed?

Ans. I think he did the next morning say something to that
1317 effect; he said Mr. Powers was not quite ready.

Int. 274. Will you now state whether on the day of the sale you did or did not consent that the payment and the delivery of the deed might be postponed till the next day?

Ans. I don't think I did.

Int. 275. Did you go from the court-house after the sale directly to Cook & Sargent's bank?

Ans. As to that I couldn't say whether I went there directly.

Int. 276. Did you see Charles Powers at Cook & Sargent's bank after the sale and on the same day of the sale?

Ans. I am not able to say.

Int. 277. Did you see him there at any time after the sale, and before the money was paid and the deed to you executed?

Ans. I am not able to say.

Int. 278. Did you see Powers after the sale and before he ex-
1318 ecuted to you the deed at any place?

Ans. I think he came to see me at the State Bank the morning after the sale.

Int. 279. What did he come to see you about at that time?

(Objected to as immaterial, & because the question calls for no fact but for the conclusion or inference as to the object or motive of Powers.)

Ans. It was in regard to that sale of the day previous.

Int. 280. What did he want in regard to that sale?

(Objected to because the declarations or wants of said Powers are not evidence against these defendents, and because the question does not ask for the conversation which occured.)

Ans. He wanted to know from me if I would not give up my bid.

Int. 281. To whom did he want you to give up your bid?

(Objected to for the same reason as the last interogatory.)

1319 Ans. He did not state to whom to me.

Int. 282. Did he want you to give up your bid and have the farm sold over again?

(Objected to for the same reasons as the 280 int.)

Ans. He wanted me to give up my bid; he did not say anything about selling the farm over again.

Int. 283. What did he want you to give up the bid for?

(Objected to for the same reasons as the 280 int.)

Ans. I think that he said he might possibly make some arrangment with Capt. May.

(Answer objected to by def'ts' solictor as containing a statement of Powers, which is not evidence against these defendents.)

Int. 284. What did you tell him; that you would give up the bid, or that you would not?

(Objected to as immaterial, and objectionable in point of form in attempting to confine the witness to one or two given formulas
1320 of answer.)

Ans. I told him I was not in the habit of doing that kind of business of giving up a bid, but I would see my lawyer, John P. Cook, and that he would be able to get an answer after seeing John P. Cook.

Int. 285. Did you not expressly agree with Powers at this time that you would give up your bid?

Ans. I don't think I did.

Int. 286. Was this interview between you and Powers before or after you received this conveyance from Powers to you?

Ans. It was before, sir.

Int. 287. How long before?

Ans. Oh, maybe two or three hours.

Int. 288. Did you see Powers again after that, before the conveyance from him to you was delivered to you?

1321 Ans. I don't remember of having seen him.

Int. 289. About what time on the day of the 21, or the day after the sale, was it that you received the conveyance from Powers or Cook?

Ans. In the neighborhood of about 12 o'clock, I think it was.

Int. 290. In your answer you state "upon information and belief that May had no means to pay the incumbrances upon Rose Bank; that he made arrangments or a bargain for a loan of $6,000 and no more;" from whom did you receive this information that May had made a bargain or arrangments for $6,000 & no more?

(Objected to because the witnesses' sources of information on matters of which he has no personal knowledge is not competent in evidence, but are wholy frivelous and impertenent to the case.)

Ans. I got the information from some citizens of this place, in which I believe they stated the truth.

1322 (All after the word "place" in the 2nd line of this answer objected by complainant's solicitor as not responsive.)

Int. 291. Give the name of the person from whom you received the information.

(Objected to for the same reasons as the last preceeding interogatory.)

Ans. I don't think I can mention any one just now.

Int. 292. Do you now recollect that you ever received such information from any person?

(Objected to as calling for hearsay, immaterial, and for the same reasons as the 290 int.)

Ans. I am certain that I did.

Int. 293. Was it from any persons who had been connected in this transaction with Capt. May, and who would be likely to know anything about it?

(Objected to for the same reasons as the 290th int.)

Ans. I have already stated that I dident recollect.

1323 Int. 294. Do you mean to be understood now that you received information on that subject which was sufficient for you to swear that you believed it, and yet that you are unable to state who gave the information?

(Objected to as an attempt to argue with and browbeat the witness, and as grossly frivelous, immaterial, and impertenant.)

Ans. I do.

Int. 295. Can you now state when and were you received such information?

(Objected to as immaterial, frevilous, and impertenant.)

Ans. In Davenport, some time previous to [to] that declaration in my answer.

Int. 296. Can you specify at what place in Davenport you received the information?

Ans. In the street, and in our own board at the State Bank.

1324 Int. 297. Was Ebenezer Cook present at the board at the time you received the information spoken of in your last answer?

(Objected to for the same reasons as the 295th int.)

Ans. I could not say; I havent got the reord of the proceedings of the meeting.

Int. 298. Was Antoine Le Claire present?

(Objected to for the same reasons as the 295th int.)

Ans. I don't remember whether Mr. Le Claire was there or not.

Int. 299. Was George L. Davenport there?

(Objected to for the same reasons as the 295 int.)

Ans. He was generally at the board; I could not say posative whether he was there at that time or not.

Int. 300. Do you now recollect the name of any persons that was there at that time?

(Objected to for the same reasons as the 295th int.)

1325 Ans. I do not, because I don't recollect at what particular meeting of the board I heard it.

Int. 301. In what year was it that you heard this in your board, as stated in your answer to question 296?

(Objected to for the same reasons as the 295th int.)

Ans. It might have been in the latter end of 1859, or as late as the month of January, 1860.

Int. 302. Was this talked over generally by the members of your board or not, at that time?

(Objected to for the same reasons as the 295th int.)

Ans. No, sir; not that I knew of.

Int. 303. Was there one, or two, or three, or more, or less that talked about it at that time?

(Objected to for the same reasons as the 295 int.)

Ans. I could not say the number that talked about it; it may have been one or two.

1326 Int. 304. Did those persons who talked about it in your board pretend to have any knowledge of their own about it, or did they give it as mere hearsay?

(Objected to for the same reasons as the 295 int.)

Ans. I did not enquire of them where they got it from or how they got it.

Adjourned until 9 o'clock a. m. to-morrow, March 3d, 1864.

R. LINDERMAN, *Com'r.*

MARCH 3D, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 305. Did you have any conversation with the defendants, or either of them, in regard to the sale or purchase of this property before the sale took place, except the conversation which you say took place between you & John P. Cook at the court-house on the day of sale?

Ans. I never had.

1327 Int. 306. Did you have any conversation with either of the defendents in regard to the sale after it took place?

(Objected to as immaterial, and also as vague and indefinate in not specifying with which defendent, nor time or place of conversation.)

Ans. I don't remember of having any just now with any, except Mr. Cook; I might have had after the sale with some of the defendents, but am unable to state just now.

Int. 307. At the time you bid in the property at the sale, had you learned or been informed that Antoine Le Claire had purchased Rose Bank of Capt. May?

(Objected to as immaterial, and because it has heretofore been put to the witness and answered.)

Ans. I was not aware of that.

Int. 308. Did you go to the court-house on the day of sale with John P. Cook?

Ans. I don't remember that.

Int. 309. Did you go with Charles Powers?

1328 Ans. I make the same answer.

Int. 310. Did you, at the time you went to the sale, expect to purchase the premises?

(Objected to as immaterial.)

Ans. I thought I would if I was a successfull bidder.

Int. 311. Do you mean to be understood that at the time you went to the sale you had no contract, arrangment, or understanding with John P. Cook, or Powers, or any of the other defendents, that you was to bid on the premises?

Ans. I had no contract with Powers or any of the defendents whatever, with the exception of John P. Cook, my lawyer, and I can't say whether my conversation with him was before I came to the court-house or not.

Int. 313. Had you seen John P. Cook on the day of the sale before you went to the court-house to attend the sale?

Ans. I might have seen him, but am unable to state.

1329 Int. 314. Do you now recollect whether you saw him or not?

Ans. I do not.

Int. 315. Do you recollect of seeing Chas. Powers, or Antoine Le Claire, or either of them, on the day of the sale, and before the sale?

Ans. I don't recollect of seeing Mr. Le Claire or Mr. Powers.

Int. 316. How long were you at the court-house before the sale opened?

Ans. I might have been there an hour; maybe more; I could not say to a minute.

Int. 317. Did you get there before or after Powers?

Ans. I can't say.

Int. 318. Did you, at any time after you had made up your mind to sell Rose Bank, offer it to Capt. May?

(Objected to as immaterial.)

Ans. I guess not; not to him.

1330 319. Do you recollect whether you did or not?

(Objected to as immaterial.)

Ans. I know I did not.

Adjourned until 9 o'clock a. m. to-morrow, March 4th, 1864.

R. LINDERMAN, *Com'r.*

MARCH 4TH, 1864.

Examination of the witness L. C. Dessaint resumed pursuant to adjournment.

Int. 320. At the time Powers sold and you bid in Rose Bank, or on

that day, did Powers, to your knowledge, sell or offer for sale at the court-house any other property?

(Objected to as immaterial.)

Ans. I don't know whether he did or not.

Int. 321. Did he sell or offer to sell any other in your presence or to your knowledge?

(Objected to as immaterial.)

Ans. I could not say whether he offered any other property but this farm; I do not know of his doing so.

1331 *Cross-interrogatories No. 1 to No. 44.*

The direct-examination here closed, and the defendents' solcitor not waiving any objections to the taking of these depositions, or any of them, or to the examination of this witness, propounds the following cross-interrogatories:

Cross-int. 1. What is your native language?

(Objected to by complainant as immaterial.)

Ans. French.

C. int. 2. State whether or not you understand and speak the English language as perfectly as the French.

(Objected to as immaterial.)

Ans. I don't think I do quite.

C. int. 3. In your answer to the 20th direct-interogatory you speak of having heard about a settlement between May & Le Claire, you think, as early as 1855 or 1856; state what it was that you refer to as having been then heard by you.

1332 Ans. The settlement I understood then was in regard to some division of this town, of an early date, between Antoine Le Claire and the plaintiff, James May, and that then Capt. May was indebted to Antoine Le Claire on settlement some six or seven hundred dollars; so I understood at the time.

C. int. 4. In your answer to the 14th direct interrogatory, in which you were asked whether you were at any time advised or informed that Rose Bank farm had been sold or conveyed by James May to Antoine Le Claire, you say you had no knowledge of it, except from common talk in the street, previous to the sale. Will you now state what the said common talk in the street which you heard was?

(Objected to by complainant as not within the scope of legitimate cross-examination, and as calling for hearsay evidence.

Ans. I think one of the expressions used by a gentlemen to whom I was talking was, "That Capt. May come the giraff over Antoine Le Claire again." "Why," said I, "what about?" Well, he says, that James May

1333 had got Mr. Le Claire to sign some paper, and he thought that the old man Le Claire must have been crazy, because he said that if Mr. Le Claire had been in his right mind he would not have done it. I think this was as early as the early part of 1859.

(Answer objected to by complainant's solicitor as not responsive to the question.

C. int. 5. State the substance of the information derived by you from the common talk in the street refered to by you in your answer to direct int. 14, with regard to transactions between said Le Claire & May.

(Objected to for the same reasons as the last preceeding cross-int., and also because it does not call for any conversation that is competent, but

for the conclusion of the witness in regard to a conversation which has not been enquired about by the complainant.)

Ans. I have heard in the street that Capt. May had set the old man crazy by talking to him of the Catholic religion, and had got the old Mr. Le Claire to sign some paper or agreement; that Mr. Le Claire could not have been right, otherwise he would not have signed it; and that the paper which was signed conveyed some indebtedness of Rogers & Davenport to Le Claire to Capt. May; and if Rose Bank farm
1334 was mentioned at the time, I have no knowledge of it.

C. int. 6. Do you or not mean to be understood by your answer to direct int. 14, that you were informed by said common talk in the street that May had sold or conveyed Rose Bank farm to Antoine Le Claire?

(Objected to as leading, the witness being a party; questions which suggest the answer are not competent or admisable on examination by his solicitor.)

Ans. I could not say as far as the conveyance of that farm to Antoine Le Claire; that is, I could not say that the conveyance of that farm was spoken of at that time between me and the party. It might have been mentioned, but I cannot say positive.

(Answer objected to by complainant as not responsive.)

C. int. 7. How did you mean to be understood in your answer to direct interogatory 14, as to whether or not you heard of such sale and conveyance of said farm in said common talk in the street?

(Objected by comp't for the same reasons as the last int., and
1335 because it is incompetent to ask the witness to explain an answer which is direct and explicit to a specific question.)

Ans. My answer to question 14 does not convey what I ment to say. As to the conveyance of Rose Bank farm from May to Le Claire I have no recollection that it was mentioned to me at that time; and did not mean in my answer to question 14 to be understood that I had information of such conveyance, but ment to be understood as I answer now.

(All that part of this answer before the words "and did not mean" in the 5th line objected to by complainant as not responsive.)

C. int. 8. Will you please to explain your answer to the 147th direct interogatory?

(The said int. and answer are read to the witness.

Objected to by complainant on the ground that it assumes that the answer to that question is not clear and distinct, and that it does not express the meaning of the witness; that explenations should be made by the party acting as witness, and not by questions put to him by his solicitor.)

1336 Ans. I have already made objections to the answer when it was read over to me, as not conveying my meaning, and was told I could correct it before signing this my deposition. When I sold this farm in question to Mr. Cook he told me that he could not pay me immediately; that he had no money that he would like to draw out of the bank for that purpose; that he would give me his check upon the firm of Cook & Sargent, payable in 8 or 10 days from that time; that he was going on east in a day, when he would have the money at Cook & Sargent to meet that check when it became due; and I presented the check in the course of 7 or 8 days, learning that the money had been sent by the said Cook, and for which the firm of Cook & Sargent gave me credit in my bank-book on presentation of that check. This is the way I wish to explain my answer to question 147.

(All this answer before the word "when," in the 5th line, objected to

by complainant as not responsive; and the declaration of Ebenezer Cook contained in the answer are also objected to.)

C. int. 9. What do you mean by your answer to the 24 direct
1337 interogatory?

(The said interogatory and answers are here read to the witness.

Objected to by the complainant's solicitor for the same reasons as the last preceeding interogatorry.)

Ans. I ment to be understood that I heard it in the street from more than one person; as to how many, I could not state.

C. int. 10. Which spoke first upon the subject of your purchasing or bidding for said farm at the sale under the trust deed, in your conversation with John P. Cook on that subject prior to said sale; Cook or yourself?

Ans. Myself.

C. int. 11. What did you say?

Ans. I said to Cook that I was wanting to buy the farm; and that I would like to have him to see that everything was conducted in regard to the sale according to law, and see Powers, the trustee, about it; that if I was buying the farm as the highest bidder, that if my bid did not cover the whole amount of the claim under which he was selling
1338 the farm, that I would pay the whole amount of the note, providing that he would have nobody to run it up on me, and transfer the balance of the note over and above my bid to me, and asked Mr. Cook to see Powers in the matter, and let me know as soon as he got an answer.

C. int. 12. Was anything said about Antoine Le Claire, or about any agreement between him and the said May, in said conversation between you and Cook; if so, what?

(Objected to as not within the scope of legitimate cross-examination, and as calling for the declaration of the defendant in a matter not enquired about in the direct examination, and als as leading.)

Ans. I did not hear of any; and I had none.

C. int. 13. Prior to said sale under said trust deed had you any conversation with Antoine Le Claire, or any of the defendents in this cause, other than said John P. Cook, about the said sale, or about your purchasing or bidding for said property, at said sale; if so, with whom, and when?

(Objected to for the same reasons as the last question.)

1339 Ans. I had no conversation with Antoine Le Claire, or with any of the defendents, with the exception of John P. Cook, my attorney, at the time of the sale.

C. int. 14. Did any person suggest or propose to you that you should purchase or bid for said property at said sale; if so, who?

(Objected to for the same reasons as the 12th cross-int.)

Ans. No one, with the exception of my mother-in-law, of Saint Louis, who has since died.

(Answer objected by the complainant as giving the declarations of third persons, strangers to the suit.)

C. int. 15. What information or knowledge had you at the time of said sale that a sale of said farm under said trustee deed would interfere with or prevent the execution of any contract between said May and said Antoine Le Claire?

(Objected to by complainant for the same reasons as cross-int. 12.)

Ans. I had no information or knowledge whatever.

1340 C. int. 16. In your answer to direct interogatorry 68 you state

that you had other reasons for buying said farm; will you please to state what the said reasons were?

Ans. One of the reasons at that time was, my mother-in-law, of Saint Louis, was up here on a visit with us; I told her (in passing by that farm) that that farm would be for sale in a few days at a trustee's sale; and she told be then that if I would buy the place, she would give me the money for it, and give the farm to her daughter, my wife, providing I would live on the farm, and she would then come and stay with me; to which I agreed to, and that is one of the principal reasons why I bought the farm.

(All that part of this answer which gives the declarations of the witness and his mother-in-law objected to by complainant as incompetent, because they are hearsay.)

C. int. 17. Can you state any other reasons that induced you to buy the farm than those given in your last answer?

Ans. I was wanting to buy a farm, and had been wanting to
1341 buy a farm for some time previous to that, and had bargained for one with Judge Grant some short time previous to this sale, and did not take it because the title did not suit me, and furthermore I was wanting to buy it to make a home; any other I can't state just now; there might have been others..

C. int. 18. What was the name of your mother-in-law refered to by you in your answer to cross-interogatorry 16th; where did she reside, and is she now living?

(Objected to as immaterial and not within the scope of legitimate cross-examination.)

Ans. Mrs. Marie Durscher. She resided in Saint Louis, Missouri; she is not now living.

C. int. 19. Since you sold the said farm to Ebenezer Cook have you purchased any other farm; if so, when and where situated?

(Objected to as immaterial, and as an examination of matters not inquired about on the direct examination of the witness.

Ans. I bought one about two years ago, about half a mile
1342 north of the said Rose Bank farm, and have since improved it.

(The last part of this answer objected to by complainant as not responsive to the question.)

C. int. 20. What improvements, if any, have you made upon said land so purchased by you, and at what expense?

(Objected to for the same reasons as the last preceeding question.)

Ans. I have fenced it and built a two-storey dwelling, large barns, put out fruit and ornamental trees, and built out-buildings, &c., at an expense of about $7,000, besides the cost of the land.

C. int. 21. What knowledge or information had you, at the time of said sale, as to any plan, scheme, or combination between said Antoine Le Claire and any of the defendents in this case, or between any of said defendents or any other persons, to procure the said farm to be sold under said trust deed, or to bid off or purchase said farm at such sale for the purpose of preventing said May from fulfilling any con-
1343 tract he had made with the said Le Claire, or for any purpose.

(Objected to for the same reasons as the 19th cross-interogatorry.

Ans. I had no knowledge or information of such scheme from any of the defendents or other persons, and never was asked by any one to buy that farm to prevent Capt. May from any arrangment with Powers; and furthermore I would not have done it if I had known it.

(All that part of this answer after the word "persons" in the 3d line objected to as not responsive to the question.)

C. int. 22. Will you please produce the check drawn by you on the branch of the State Bank at Davenport for $7,440 mentioned by you in your direct examination, that the same may be annexed to your deposition as an exhibit?

Ans. I here produce said check, and hand it to the commissioner.

(The said check is annexed, marked "Defendent's Exhibit A.")

1344 C. int. 23. From what source did you obtain possession of said check after its delivery by you to John P. Cook, as stated by you in your direct examination?

Ans. I received it from the teller of the State Bank after my book had been balanced and the check paid by them.

(All that part of this answer after the word "bank," in the 2nd line, objected to as not responsive to the question.)

C. int. 24. To whom did the money on deposit to your credit at the State Bank, and which was drawn out on said check, belong?

Ans. It belonged to me.

C. int. 25. State whether or not any money was furnished to you by Antoine Le Claire, or any one in his behalf, or by any of the defendents in this suit, for the purpose of enabling you to purchase said Rose Bank farm at said trust-deed sale, or for the purpose of paying the purchase-money of said farm on said sale, or any part thereof. If so, by whom & how much?

(Objected to for the same reasons as cross-int. 19, and also be-
1345 cause the question is leading and suggests the answer desired.)

Ans. I never recieved a dollar from either of the parties above mentioned for the purpose of paying for said farm, and none was offered to me, nor did I ask any from any of them.

(All that part of this answer after the word "farm," in the 3d line, objected to by complainant as not responsive to the question.)

C. int. 26. State whether or not there was any agreement or understanding between you and Antoine Le Claire, or any of the defendents in this case, or any person, for the repayment to you of any portion of the money so paid by you for said farm; if so, what was said agreement or understanding, and with whom made?

(Objected to for the same reasons as the last preceeding interogatorry.)

Ans. There never was no such agreement mentioned above between me & Antoine Le Claire, or any of the parties above mentioned, for the purpose of reimbursing money to me, nor had I any such understanding, mentioned in the question, with anybody.

1346 C. int. 27. State whether or not any property of any kind was ever conveyed to you by Antoine Le Claire, or any of the defendants in this suit, directly or indirectly, in consideration of your having advanced money to purchase said farm at said trust-deed sale. If so, what was said property, and when & by whom conveyed to you?

(Objected to for the same reasons as cross-interogatory 25th.)

Ans. I never received any property, notes, security, or obligation for the purpose set forth in the above question from anybody.

C. int. 28. For whose benifit did you hold the title to said farm conveyed to you by said deed from Powers?

(Objected to for the same reasons as the 25th cross-interrogatory, and also as calling for a legal conclusion.)

Ans. For my own benefit.

C. int. 29. State whether or not any agreement or understanding ex-

isted between yourself and any other person, at any time while
1347 you held said title, either in writing or verbal, that you should hold said farm in any way for the benefit of or in trust for any other person, or that you should on any contingency convey it to any other person. If so, state with whom said agreement or understanding was, and what it was.

(Objected to for the same reasons as the 25th cross-interrogatory.)

Ans. I never made any contract, verbal or in writing, with any person, nor ever promised in writing or verbally to hold it for anybody. In fact, it was never asked of me by anybody. I bought the farm for my own benefit. I never made any agreement to convey it upon any contingency at that time or before to any one.

C. int. 30. At the time of said sale, how long had you kept a bank account with Cook & Sargent.

Ans. Ever since 1855, I think.

C. int. 31. How long had you, at that time, kept a bank account at the State Bank?

1348 Ans. Ever since its organization in December, 1858. I kept an account there by bank-book & by certificate of deposit until the present time.

C. int. 32. What was it your intention to do with said farm, at the time you purchased the same?

(Objected to for the same reasons as the 25th cross-interrogatory.)

Ans. My intention then was to improve it and make a home of it.

C. int. 33. You state in your direct examination that after purchasing said farm you found you could not make the improvements you desired to make upon it without greater expense than you had anticipated, or something to that effect; will you state what, if any, examination you made on that subject, and what was the result of the same?

(Objected to on the ground that it assums that the witness swore to a state of facts on his direct examination which his direct examination does not show that he swore to.)

1349 Ans. After I bought the farm and received the deed the farm was turned over to me by Mr. Joseph A. Le Claire. I went to examine all the fencing, and found them allmost worthless. The dwelling was in a horrid condition. The chimney was smokey, and would have to be torn down. The sill under the house was rotten, and the sills under the out-buildings in the same condition. The fruit-trees were more or less torn down by cattle. I worked on the farm about four or five days—me & my son and hired man—in trimming the orchard and cutting the weeds down, and at the same time I found there was a public road runing from Allen's Grove road through the western part of the said farm, and that I would have to keep the fence on both sides of said road for the accomodation of the neighbours west of said farm, and from all these things togather I thought I had a poor bargain, and made up my mind to sell it the first chance I got.

C. int. 34. Did you make any examination of the house, with
1350 reference to altering or improving the same; and, if yea, what, and did you make it alone, or with the assistance of some other person; and, if so, who?

(Objected to for the same reasons as 25th int.)

Ans. I did make an examination of the house for that purpose. I went to the carpenter who put up the house, Wm. S. Collins, and made inquirey of him as to how the house was constructed, and being a carpenter myself I examined the probable expense of raising the house from its then foundation, which was fully a foot below the level of the

ground in the rear of it, and found it could not be raised on account of having no sill and being filled with brick. I had some mechanicks with me at the time, but don't recollect who it was. In order to raise the house the plasturing would have to be torn down and the chimney demolished.

(To all that part of this answer not responsive to the question, the complainant objects; and to all that part of it which gives the inquiry of the witness to the carpenters who built the house, the complainant objects as being the declaration of the witness and not competent in his own favour.)

1351 The further taking of these depositions is here adjourned until to-morrow, March 5th, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

SATURDAY, *March 5th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

C. int. 35. For what purpose did you deliver to John P. Cook said check for $7,440?

Ans. In payment of the trustee's sale of Rose Bank farm of the 20th of July, 1859, sold on that day and knocked down to me by Powers, trustee.

C. int. 36. Was there any understanding or agreement between you and said Cook that Cook should make the payment to Powers in any other manner than by delivering to him said check or the money to be drawn thereon?

(Objected to for the same reasons as the 25th cross-interrogatory.)

Ans. I had no agreement with the said Cook, only I requested Mr. Cook to get the deed for me, and to see whether the deed was right, and that I would give him the money to pay Powers, if the deed
1352 was satisfactory to him, (Cook.)

(Answer objected to as giving the declarations of this witness to one of the other defendents.)

C. int. 37. Have you now in your possession the deed executed to you by Powers, as trustee? If so, please produce the same.

Ans. I have, and here produce it.

(The said deed is attached to these depositions, marked "Defendents' Exhibit B.")

C. int. 38. Was it of your own accord or at any one's request that you delivered said deed to your solictor, Mr. Rogers, as stated by you in your derect examinaton?

Ans. At no one's request, but of my own accord.

C. int. 39. Can you state how long a time elapsed after the
1353 failure of Cook & Sargent before they executed a general assignment?

Ans. I could not state exactly, but it must have been in the neighborhood of about twelve months after they closed their doors.

C. int. 40. In the mean time—that is, before the execution of said assignment—what, if anything, were they doing in the way of settleing with their creditors?

(Objected to for the same reasons as the 25th cross-interrogatory.)

Ans. They were paying or settleing with their creditors in personal property—real estate, and such security as they had at the time in their possession; they had a large amount of real estate and notes due them from different parties, which was exhibited to me some time in December, 1859; I think it was the day of their failure or the day after.

C. int. 41. In your answer to the 248 direct interrogatory you speak of some real estate being conveyed by Antoine Le Claire to you for the benefit of the State Bank; will you state when said conveyance was made?

1354 Ans. I think it was made on July 2d, 1861.

C. int. 42. For what purpose was the said conveyance made?

(Objected to for the same reasons as the 25th cross-interrogatory, and also because the deed itself is the best evidence for what it was made, and parole evidence of its contents is not competent.)

Ans. It was made to secure the State Bank for a note of about $4,000 that Antoine Le Claire had borrowed from the State Bank some time before this conveyance was made. I held it in trust for the State Bank.

C. int. 43. Did you ever make any conveyance of the lands conveyed to you by said deed; and, if so, to whom, and when?

(Objected to for the same reasons as the last preceding interrogatory.)

Ans. I did make a conveyance of the same land which was given to me by Antoine Le Claire, to secure the State Bank; I think it must have been in 1863, to George L. Davenport, the executor of Antoine Le Claire, at the request of the cashier of the State Bank, who said

1355 the note had been paid by the executor, and requested me to convey the land back to them, and I done so.

(Answer objected to by complainant as proving the contents of a written instrument by parole, and to that part of it which gives the statements or declarations of the cashier of the State Bank as incompetent, being hearsay.)

C. int. 44. State whether or not Ebenezer Cook was present at said sale under said trust deed.

Ans. I did not see him at the sale nor before, if I remember right.

The said witness, after reading to him his direct and cross-examination, wishes to make corrections to his answers to the following direct interrogatorys, viz:

He corrects his answer to direct interrogatory 33 as follows: I did not understand the name Kettle mentioned when the interrogatory was read to me; I do not know that the farm was sold subject to the Kettle mortgage; I only knew that it was sold subject to a mortgage.

1350 The 85th he corrects as follows: In the loby I only remember of Capt. May and myself.

The 153d int. he corrects as follows: I must have drawn in the neighborhood of eight or twelve.

Of int. 208 he says that it does not at all convey the meaning he intended, and he answers it as follows: Knowing that the charge made or alleged by the plaintiff was false as regard to myself, I inquired at that time, or before I signed the answer, of some of the defendents, and they stated to me that they never knew anything about any such conspiracy existing; and, knowing that the charge made against me was incorrect, I took it for granted that it was also incorrect as against the other defendents. This is about the substance of my information.

The answer to 296 int. he corrects as follows: In the street, and from some members of the board of directors.

His answer to 311th int. he corrects as follows: That he wished to state that he had no contract with Powers or John P. Cook, or any of the defendents. I only requested Mr. Cook, at or about the time of the sale, to act for me in the matter of purchaseing this farm.

1357 *Re-direct interrog's No. 1 to No. 100.*

L. C. D.—direct examination resumed.

The complainant, saving and reserving all exceptions and objections made by him to the cross-interrogatories put to this witness, propounds to the witness the following questions:

Int. 1. In your answer to the 8th cross-int. you say that Ebenezer Cook told you that he had no money that he would like to draw out of the bank for that purpose, (payment for Rose Bank,) but that he would give you his check upon the firm of Cook & Sargent. Did he state to you whether he had or had not money in the bank at that time?

Ans. He told me that he would not like to draw money out of the firm for that purpose at that time.

Int. 2nd. Did he say whether he had or had not money in the bank at that time?

Ans. I didn't ask him if he had money. He told me that he had no money for that purpose.

1358 Int. 3d. Did he say whether or not he had money for any purpose, or at all?

Ans. I don't remember that he said anything of the kind; he only told me what I have stated above.

Int. 4. Did he say that he did not want to pay you the money at that time?

Ans. He did not say anything of the kind.

Int. 5. Did you expect when you made the agreement with him to get the money at that time?

(Objected to as immaterial, and because it does not appear that any agreement was made prior to the stipulation as to the time of payment.)

Ans. No; because he stated that he wanted me to wait on him eight or ten days.

Int. 6. What reason did he give for wanting you to wait on him?

Ans. Because he said that he could get the money on east, from some of his friends.

1359 Int. 7. Did you agree at that time to wait on him; and, if so, how long?

Ans. I did agree to take his check for the ammount on the firm of Cook & Sargent, payable in eight or ten days; it might have been a few days more.

Int. 8. Was this agreement in respect to taking his check made at the time you delivered to him a deed for Rose Bank farm, or was it made before?

Ans. It was made near about that time.

Int. 9. Was it on the same day?

Ans. I made the agreement the day before I delivered the deed, I think.

Int. 10. Did you receive a check from Ebenezer Cook?

Ans. I think I did.

Int. 11. Are you certain about that?

Ans. I could not say posetive whether it was a check or a draft,

1360 or some other thing which would show that he was indebted to me for that amount.

Int. 12. Did you receive a check or draft, or some other paper, showing the amount that was due you on the sale of Rose Bank?

Ans. I can't state positive which, but I am quite certain it was a check, and I have got my pay for it from the said Cook.

(All that part of the answer after the word "check" objected to by complainant's solicitor as not responsive.)

Int. 13. Was the check or paper which you received at that time dated on the same day the deed was dated?

Ans. I can't say to a day.

Int. 14. Whose name was signed to this check or paper which you received?

Ans. E. Cook.

Int. 15. If it was a check or a draft, upon whom or what house was it drawn?

Ans. It was drawn on the house of Cook & Sargent.

1361 Int. 16. Was it made payable on its face 8 or 10 days after its date?

Ans. As to that I can't state, but I know I agreed to wait.

(All after the word state objected to by complainant as not responsive to the question.)

Int. 17. To whom was it payable?

Ans. It was payable to me.

Int. 18. Was it delivered to you at the time?

Ans. It was delivered at the time I gave the deed.

Int. 19. Was that check paid by the firm of Cook & Sargent on presentation?

Ans. It must have been paid because I got credit for it.

Int. 20. Did you present the check or draft at the banking-house of Cook & Sargent yourself?

Ans. I did.

1362 Int. 21. Was the money to meet it deposted to your credit at the time you presented the check, or before?

Ans. I don't know whether Mr. Cook put the money there to my credit or not, but it was credited to me on my book at my own request.

Int. 22. Was the money deposited to your credit at the time you presented the check, or had it been deposited before you presented the check?

Ans. I can't say whether it was or not.

(Answer objected to by complainant as not responsive to the question.)

Int. 23d. Was you present at the bank when this money to pay the check was placed to your credit?

(Objected to because it is obscure, ambiguous, and impossible to be understood, inasmuch as it is left doubtfull whether the question means to ask if the witness was present when the amount of the check was passed to his credit on his presentation thereof for payment, or

1363 whether it means to enquire if the witness was present when the money to meet this check was deposited in the bank by the drawer of the check or to his credit, or whether the question means either of said things.)

Ans. I was not present at the bank when Mr. Cook put the money there to my credit, but I was present when it was credited to me on the bank-book.

Int. 24. Do you know on what day it was credited to your account on the books of the bank?

Ans. Having no access to Cook and Sargent's books, I am unable to say.

Int. 25. When did you first learn that it was placed to your credit at the bank?

Ans. I was told at the time that I presented the check that it would be paid, and I took it for granted that the money was there; whether to my credit or about to be put to my credit, I can't say.

(Answer objected to by complainant as not responsive, and giving declarations of persons not called for by the question.)

1364 Int. 26. State on what day you presented the check.

Ans. It must have been on August 4th, 1859.

Int. 27. Was the amount of the check credited in your bank-book with the firm of Cook & Sargent at that time?

Ans. It was.

Int. 28. In whose handwriting?

Ans. I could hardly say; I think it was by the cashier.

Int. 29. Do you recollect who was present at the bank at that time?

Ans. I think Mr. Davie, one of the firm; James S. McKenzie, book-keeper; the teller or cashier; a German whose name I don't recollect; and might be two or three clerks, in the counting-room. This is as near as I remember.

Int. 30. Were either of the defendents John P. Cook or Ebenezer Cook there?

1365 Ans. I know Ebenezer Cook was not there. As to John P. Cook, I don't remember.

Int. 31. Did Ebenezer Cook go east about the date of your deed?

Ans. I think he did.

Int. 32. How long was he gone?

Ans. I can't state. He did not report to me when he came back.

Int. 33. Had he got back at the time you presented this check at the bank or not?

Ans. I don't think he was back.

Int. 34. Do you know that, on the same day of the date of your deed to Ebenezer Cook, John P. Cook took an assignment of this Kettle mortgage from Powers, and that you indorsed the notes given in payment?

(Objected to as not proper on re-examination of the witness, relating to nothing brought out on cross-examination, and as assuming a fact to be true of which there is no evidence whatever.)

1366 Ans. I don't know any such thing. I never endorsed no note for any man. If I did, it was "without recourse on me."

Int. 35. Do you know that on the date of your deed to Ebenezer Cook that an assignment of the Kettle mortgage was made to John P. Cook by Charles Powers, or the mortgagee named in said mortgage?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I have no knowledge.

Int. 36. State, if you know, what was done with the deed of trust under which Powers sold after the sale and your purchase of Rose Bank.

(Objected to as not proper on re-examination; relating to no subject touched upon in the cross-examination.)

Ans. I can't say what was done with it. I left the business to settle with my lawyer, Mr. Cook.

Int. 37. Was it ever delivered to you?

(Objected to for the same reasons as the last preceeding interrogatory.)

1367 Ans. I don't think it was at the time. I left it with Mr. Cook to fix.

(The last part of the answer after the word "was" in the first line objected to by complainant as not responsive.)

Int. 38. Int. 37 repeated.

(Objected to for the same reasons as the 36 int.)

Ans. I don't remember.

Int. 39. Do you now remember of ever having had it in your possession?

(Objected to for the same reason as the 36th interrogatory.)

Ans. I do not remember.

Int. 40. Was there ever any assignment of that deed of trust, executed by Charles Powers, delivered to you?

(Objected to for the same reasons as the 36 interrogatorry.)

Ans. Not to me, that I know of.

Int. 41. Do you know where the note is that was secured by that deed of trust?

(Objected to for the same reasons as the 36 int.)

1368 Ans. I do not.

Int. 42. Was that ever delivered to you?

(Objected to for the same reason as the 36th int.)

Ans. I don't remember, sir.

Int. 43. Do you not know that about the time you executed the deed to Ebenezer Cook that the trust deed under which Powers sold Rose Bank to you, and the note secured thereby, were transfered and assigned by Powers to John P. Cook?

(Objected to for the same reasons as the 34th interrogatorry.)

Ans. I don't know anything about it.

Int. 44. Did you, at the time you executed the quitclaim deed of Rose Bank to Ebenezer Cook, execute or deliver to him any other paper or papers than the quit-claim deed?

(Objected to for the same reasons as the 36th interrogatorry.)

Ans. I don't remember of any just now. If I did, it must have
1369 been some assignment of the balance of that note, without recourse on me, and which I don't now remember.

(All of this answer after the first line objected to by complainant as not responsive to the question.)

Int. 45. You say that you paid $7,440 for Rose Bank farm. State any reasons, if you know of any, why that amount of consideration was not inserted in the deed from Powers to you, which you produced on your cross-examination as an exhibit.

(Objected to for the same reasons as the 36th int., and because the witness has not testified that he paid the sum named for the farm, but for the farm and the note secured by the deed of trust togather.)

Ans. I bought the farm at the highest bid, and had agreed to pay the whole amount of the note and costs to Mr. Cook; and having Mr. Cook here to attend to the business for me, I supposed that he got this deed made to suit his view as well as my own interest. This is as near as I remember.

1370 Int. 46. Did you read this deed, or hear it read, before its delivery to you by John P. Cook, as you stated on your direct examination?

(Objected to for the same reasons as the 36th int.)

Ans. I don't remember of reading it myself, or of hearing it read, but Mr. Cook told me it was all right, according to agreement with Powers.

The further taking of these depositions is here adjourned until Tuesday, March 8th, 1864, at 9 o'clock a. m. of that day.

R. LINDERMAN, *Com'r.*

TUESDAY, *March 8th—9 o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 47. At the time you received that deed did you know what the amount of consideration stated in it was?

(Objected to as immaterial, and not proper on re-examination, relating to nothing touched upon in the cross-examination.)

Ans. I understood the consideration was the amount of my bid at the court-house.

1371 Int. 48. You say, in answer to cross-interrogatorry 33, that after you bought the farm, (Rose Bank,) and received the deed, the farm was turned over to you by Mr. Joseph A. Le Claire. State how or why the farm came to be turned over to you by Joseph A. Le Claire.

Ans. I understood that Joseph A. Le Claire was working the farm, or had a tenant on it, at that time. I told him that I had bought the farm, and was wanting to make some improvements and repairs on it. He said it was all right; that he knew that I had bought the farm, and he said to me, "You can do just as you see fit in the way of repairs and improving it; but," said he, "my crops, which are already harvested, or about to be harvested, I don't want you to meddle with;" to which I replied, that I didn't want anything to do with his crops, as I knew they were his. This is as near the substance of the conversation between him & me as I remember.

(All of this answer after the word "time," in the third line, ob-
1372 jected to by complainant's solictor as not responsive, and as conversations between the witness & J. A. Le Claire, which are incompetent, and not called for by the question.)

Int. 49. How did you learn that Le Claire was working the farm, or had a tenent upon it, as stated in your last answer?

(Objected to for the same reasons as the 47th int.)

Ans. At the time I received my deed, or about that time, I, of course, made some inquiry in whose possession the farm was; and Mr. Joseph A. Le Claire told me he was in possession of the farm, and that is why the conversation related in the previous answer took place.

Int. 50. From whom did you first learn that Joseph A. Le Claire was in possession of the farm?

(Objected to for the same reasons as the 47th interroga tory.)

Ans. I could not state positive from whom it first was. It might have been from Mr. Joseph A. Le Claire, or it might have been from Mr. Cook.

1373 Int. 51. Were you first informed that J. A. Le Claire was in possession before or after you got your deed?

(Objected to for the same reasons as the 47th int.)

Ans. It was about the time I got the deed.

Int. 52. Did you know who was working the farm before you got your deed?

(Objected to for the same reasons as the 47th int.)

Ans. I had no interest in the matter before the purchase of the farm, and have no recollection of asking any one, or having been told by any one, who was working the farm previous to the sale.

Int. 53. By what right or authority, or by whose permission, did you understand that Joseph A. Le Claire was occupying these premises?

(Objected to for the same reasons as the 47th int., and also as calling for hearsay or the understanding of the witness, which is not evidence.)

1374 Ans. I did not enquire, and had no business to enquire, and did not care, by whose authority he was occupying the premises. I was only told that he had the farm.

Int. 54. Did you learn or understand at the time that in the spring of 1859 he had put in a crop, or that a crop had been put in by his tenant Dennis Navin, upon shares.

(Objected to for the same reasons as the 53d interrogatory.)

Ans. I don't remember of hearing anything about it. I never was on the farm before the sale, that I remember, except while Capt. May was living there, some two or three years previous to the sale.

(All that part of the answer after the words "about it," in the 2d line objected to by complainant as not responsive.)

Int. 55. You state in your cross-examination that before the sale under the trust deed, you rode by the farm with your mother-in-law. Did you then notice whether the farm was under cultivation, or whether any crops were being raised on the premises?

1375 Ans. I noticed that part of the land was under cultivation, to what extent I hardly remember; I paid no attention to the crops; I noticed there were some stacks on the west part of the farm, and that Navin was working there; I don't think I said anything to him before that sale.

Int. 56. Did you, at the time you bought these premises, buy them with the agreement, understanding, or expectation that you was to have the crop that was then being raised upon the premises, or that they should be taken off by the tenant then in possession?

(Objected to for the same reasons as the 53d int.)

Ans. I have already stated that I had no expectation of getting the crops, knowing that I had no right to them after they were partially harvested; and I don't remember of any agreement in regard to the crops.

Int. 57. Did you go or send your hired man, to cut grass or hay on the premises after the sale.

1376 Ans. I did go, me and my hired man, to cut grass or weeds in the neighborhood of the house.

Int. 58. Did you, after the sale, have a conversation at Antoine Le Claire's office with Dennis Navin, the tenant in possession, in which you claimed the right to cut and take away the timothy on the premises?

(Objected to for the same reasons as the 47th int., and also as objectionable in form, in not asking the witness to state what the conversation, if any, was.)

Ans. I had some conversation with this Navin, and asked him why he had stoped my man from hauling the grass. I told him then that we had cut all the weeds around the orchard and house, and being but very little good grass in all the mowing we had done there, I told him I thought he acted very mean to stop my man from taking that grass; to which he replied that part of that grass was his, and that he did not like my man to take it off of the premises; to which I replied that I wished he would take the weeds too, and put them away from

1377 the place, as well as the grass that I had cut; to which he replied the weeds were of no value to him, and he would let them rot on the place. This is about the substance of the conversation.

(All of the answer after the first three lines objected to by complainant as not responsive.)

Int. 59. Did you buy Rose Bank at the sale, and receive a deed therefore, without knowing whether it had or had not been rented to Joseph A. Le Claire, or some other person, for one or more years?

(Objected to for the same reasons as the 47th int.)

Ans. I understood it was only rented for one year, about that time; from whom I learned it I cannot state positively, as I have already said.

Int. 60. Did you learn that it had been rented for only one year, before or after you got your deed?

(Objected to for the same reasons as the 47th int.)

1378 Ans. As to whether it was before I got the deed, I don't remember.

Int. 61. You state, in answer to question 59 put to you on your re-examination, that you understood about the time of the sale that the farm was rented for only one year; to whom did you understand it was rented for one year?

(Objected to for the same reasons as the 53d int.)

Ans. I did not know at the time that Dennis Navin had rented it. I only found out, when I went to take possession of the farm, that he was the renter by him saying so.

Int. 62. Did you understand, at the time you got your deed, that the premises had been rented for any period of time?

(Objected to for the same reasons as the 53d int.)

Ans. I think I understood that it had been rented for one year or for one season.

Int. 63. Was your information that it had been rented for one year received from John P. Cook, or Charles Powers, or either of them?

1379 (Objected to for the same reasons as the 53d int.)

Ans. I can't say from whom I received it just now; I do not remember.

Int. 64. Did you go to see Joseph A. Le Claire about turning the farm over to you, or did he first call on you in reference to it?

Ans. I don't remember exactly whether I called on him, or him on me, about it, but I remember that the farm was turned over to me at my request.

Int. 65. In what way was it turned over to you?

Ans. By giving me the possession of it, I suppose; which I have already stated in some previous answer.

Int. 66. Did not Dennis Navin continue in possession of the premises after this time, as he had before, down to the spring of 1860?

Ans. I have no knowledge if he did. After I sold the farm, I

1380 did not know who was on it, and paid no attention to it.

Int. 67. Did not Dennis Navin continue in possession of the house and premises after the sale, as he had before, down to the time you executed the deed to Cook?

Ans. I think he was in possession of the premisses; at least, I think he was a tenant of Mr. Le Claire's then.

Int. 68. You say, in answer to the 40th int. on your cross-examination, that Cook & Sargent, after their failure and before their assignment, were paying and settleing with their creditors in personal property, real estate, and such security as they had at the time in their possession. Is this statement in answer to 40th cross-interrogatory based upon your knowledge of what they were doing, or only upon information?

Ans. Partly from knowledge & partly upon information, because they offered me some security to secure the balance they owed me at the time.

1381 Int. 69. Had you any personal knowledge of what they were doing in the way of paying and settleing with creditors after the time they settled with you & Schricker on the 16th of December, 1859, as stated by you in your direct examination?

Ans. I have no personal knowledge after I settled. Having been satisfied, I had no occasion to enquire.

Int. 70. In paying and settleing with their creditors, did they pay all

their creditors something on their claims, or did they settle with some and leave others wholy unpaid and unprovided for?

(Objected to as immaterial.)

Ans. That is a question I am not able to answer. I have no knowledge how they settled their business.

Int. 71. Where was the real estate conveyed to you by Antoine Le Claire July 2d, 1861, situated?

Ans. I can't remember all the counties just now, but I am quite sure some of it was in Johnson and Iowa Counties, and I think some in Muscatine County.

1382 Int. 72. Was it city property or farming land?

Ans. Some of it was city property in Iowa City, and some farming lands. Acting as trustee for the State Bank in the matter, I did not pay much attention to the matter.

(All of this answer after the 2d line objected to by comp't's solicitor as not responsive.)

Int. 73. Do you know that on the 16th day of December, 1859, Cook & Sargent executed to Antoine Le Claire a mortgage on real estate to secure the sum named in the mortgage of $70,000?

(Objected to as immaterial, and because if such fact exists there is better evidense of it, and also as not relating to any matter touched upon in the cross-examination.)

Ans. I don't know anything about it.

Int. 74. State, if you know, where the deed is executed to you by Antoine Le Claire on the 2d of July, 1861.

1383 Ans. I returned it to the State Bank and don't know where it went to from there.

Int. 75. Did you know the condition in which Rose Bank farm and the fences and buildings thereon were when you bid off the farm at the trustee's sale on the 20th of July, 1859?

Ans. I did not know much about it. The house being a good way from the road, I never had a chance of examing it. I thought at the time that the fences were tolerable fair, such as they were.

(All of the answer after the word "it" in the first line objected by comp't's solicitor as not responsive.)

Int. 76. Had you not made an examination of the premises to ascertain their condition before you bid off the farm at the trustee's sale?

Ans. I can't state positively; I don't remember.

Int. 77. Do you not recollect whether you did or did not make an examination of the premises before the sale?

1384 Ans. I have already stated that I did not recollect of going to examin the premises before the sale; but having occasion to pass through the land several times previous to the sale, I thought the improvments were fair improvments for this country, as far as they appeared.

(All that part of this answer after the word "sale" in the 3d line objected by complainant's solicitor as not responsive.)

Int. 78. If your intention was when you bought Rose Bank to improve and make a home of it, why did you not examin it and ascertain its condition before you bought it?

Ans. Because I thought that the improvments on the farm were as good as they appeared, and, in fact, I did not know that I could buy the farm until a very short time before the sale, or about the time of the sale.

Int. 79. Did you know at the time you purchased Rose Bank at the sale the condition of the fences, and that the sills to the house and out-

buildings were rotten, & that the fruit-trees were more or less
1385 torn down by the cattle, as stated by you in your answer to cross-int. 33?

Ans. I did not.

Int. 80. Do you mean now to say, or to be understood, that you bought Rose Bank for the purpose of keeping and improving it, and paid for it the sum of $7,440, without a particular examination of it to ascertain its true condition?

(Objected to because the witness has already stated the facts and circumstances under which he purchased, and the question is an attempt to argue with him and not an enquirey for the facts, and is not admissable on direct examination.)

Ans. I mean to be understood that I bought the farm for my own benefit, and having occasion to pass through the farm pretty often during that summer, that I thought the improvments were fair. The house being near about a quarter of a mile from the road where I was passing, I could judge only from the appearance of the thing, and had formed an opinion of my own that the improvments were fair.

1386 (This answer objected to by complainent as not responsive to the question.)

Int. 81. Can you give any more direct or explicit answer to the last question than that given in your last answer?

(Objected to for the same reasons as the last preceeding question.)

Ans. I cannot, to the best of my recollection.

Int. 82. You say in the first part of your answer to direct interrogatory 57, "I generally know what I am doing when I purchase anything;" did you know what you were doing when you bought Rose Bank farm, to make a home of, without knowing its condition, and in the condition you say it was in your answer to cross-interrogatory 33?

(Objected to for the same reasons as int. 80, and as unintelligable, vague, & uncertain—not asking the witness as to his knowledge about any fact.)

Cross interrogatory 33 and answer is here read to the witness
1387 at the request of complainant's solicitor, and the witness their answers as follows:

Ans. I thought I knew then near about the condition of the thing; but on examining the premises after I purchased, I had deceived myself.

(Answer objected to by complainant as not responsive.)

Int. 83. Can you now name the person who stated that "Capt. May had come the giraff over Antoine Le Claire again, and set him crazy," as stated in your answers to the 4th & 5th cross-interrogatory?

Ans. I can't remember who it was no more now than I could then.

Int. 84. What Davenport do you refer to when you speak of Rogers & Davenport in your answer to cross-interrogatory 5?

Ans. I mean Adrain H. Davenport.

Int. 85. What indebtedness of Rogers & Davenport to Le Claire was stated at that time, if any?

Ans. I think there was nothing said about it except that it was
1388 some note or indebtedness, or something like that.

Int. 86. Did the person who gave you the information stated in your answer to cross-int. 5, state to you what compensation May had agreed to give to Le Claire, for this indebtedness of Roger & Davenport?

Ans. I don't think he did; and being no business of mine, I did not enquire.

Int. 87. Was not the true reason that you conveyed Rose Bank to

Ebenezer Cook, that you expected to have litigation with Capt. May if you kept it, and you wanted to avoid that?

(Objected to as improper in form, and inadmissable on direct examination.)

Ans. I don't think it was. Mr. Cook having examined the tittle, told me it was all right, and I put full confidence in his opinion at the time. I might have remarked to Mr. Cook at the time, that May might bring a suit of some kind. But Mr. Cook told me that that was Mr.
1389 May's usual style of doing business, after the land was sold to sue; but that May had no legal effect against me. This conversation was with John P. Cook, my lawyer.

(All that part of this answer after the word "was," in the first line, objected to by complainant as not responsive, and also as giving the conversation between the witness & John P. Cook, not called for by the question.)

Int. 88. What did you understand at the time you bid off Rose Bank farm at the trustee's sale was the amount due on the mortgage to which it was sold subject?

(Objected to as immaterial, as not calling for any fact but the witnesses' understanding, and as relating to nothing enquired about in the cross-examination.)

Ans. I understood that the mortgage was near about $3,000. It might have been more, but at this time I do not recollect.

Int. 89. If the farm was not worth over between $8,000 &
1390 9,000, as stated by you in your direct examination, why did you buy the premises, and pay or assum, including the prior mortgage, the sum of nearly $10,500?

(Objected to as refering to nothing inquired about in the cross-examination, and because the same question has in substance been asked of and answered by the witness repeatedly.)

Ans. Why, my lawyer told me that Capt. May would be liable to make up the diferance above the price of the farm at the time it was sold; providing it could be made out of him—or something to that effect—which I thought at the time I could, and left the whole matter with Mr. Cook, my lawyer, to settle for me.

Int. 90. Did your lawyer, Mr. Cook, at that time tell you whether it could or could not be collected of Capt. May?

(Objected to for the same reasons as the last preceeding interrogatory, and as ambiguous, and equivocal, not appearing whether the inquiry ment whether Cook told the witness whether May was legally lia-
1391 ble to pay, or that he had property out of which the amount might be made.)

Ans. I don't remember that he used any such remark; he might, but I have no recollection of it.

Int. 91. Did Cook, in that conversation, say whether or not May was good or responsible for the balance or differance that you speak of?

(Objected to as immaterial, and as not relating to anything called out on the cross-examination.)

Ans. I don't remember what Mr. Cook said in reference to it; but I thought I could make it out of him.

(All of this answer after the word "it," in the 2nd line, objected to by complainant as not responsive to the question.)

Int. 92. Did you believe at the time of this conversation with John P. Cook, and at the time you bid off Rose Bank, that May was responsible for this balance or difference you speak of?

(Objected to for the same reason as the last preceeding interrogatory.)

1392 Ans. As to the responsibility of May, I did not know; but I thought I could make it out of him some way.

(Answer objected to by complainant as not responsive to the question.)

Int. 93. At the time you sold the farm to Ebenezer Cook, did you say to him, in substance, that Capt. May was blowing about the sale, and you wished you had had nothing to do with it, as it might get you into litigation?

(Objected to for the same reasons as the 91st int.)

Ans. I don't remember of any such conversation at the time.

Int. 94. You speak in your cross-examination of having bought a farm about two years ago; did you buy that for the purpose of making a home of it?

(Objected to as immaterial.)

Ans. I did.

Int. 95. Did you ever move on that farm with your family?

1393 Ans. I did not.

Int. 96. Have you made a contract or agreement for the sale of that farm?

Ans. I have entred into an agreement of that kind.

Int. 97. In your explanation given by you correcting your answer to direct-interrogatory 33, you state that you did not understand the name, Kettle, mentioned; that you do not know that the farm was sold subject to the Kettle mortgage; you only know that it was sold subject to a mortgage. For the purpose of refreshing your recollection, I ask you if you did not state in your answer in this case in substance that it was sold, and you bought it, subject to the Kettle mortgage?

(Objected to because the answer to said interrogatory 33 relates to the witness' knowledge or information about said mortgage at the time of the sale, and not what he subsequently learned about it.)

Ans. If I did, I have no recollection of it.

1394 Int. 98. You state in your direct examination that the deed from Powers to you was in the hands of your solicitor, Mr. Rogers, and on your cross-examination you produced that deed as an exhibit; state when that deed was returned to you by your solicitor.

(Objected to as immaterial & frivilous.)

Ans. Last week; some time during this examination.

Int. 99. Did you, at the time the deed was returned to you by Mr. Rogers, or at any other time after your direct examination and before your cross-examination was concluded, have any conversation with Mr. Rogers as to the manner in which you would explain the direct interrogatorys explained by you during and at the end of your cross-examination, or in regard to your examination and answers in this case?

Ans. Mr. Rogers never said anything to me in regard to any explaination, or in regard to my examination or answers in this case.

1395 Int. 100. Were your business and personal relation with Antoine Le Claire for two or three years before his death intimate or otherwise?

Ans. My relation with him were friendly; I loaned him money, and done business with him whenever I thought I could make any money out of him, and I suppose he done the same with me.

The further taking of these depositions is here adjourned until tomorrow, Wednesday, March 9th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

Re-cross interrog's No. 45 to No. 58

WEDNESDAY, *March 9th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Cross-examination resumed:

Cross-int. 45. You state in your answer to int. 37 on your re-examination that you don't think the deed of trust under which Powers sold the said farm was ever delivered to you, and in your answer to int. 42, that you don't remember that the note secured by said deed was ever delivered to you; can you state how it happened that said papers
1396 were not delivered to you, if they were not so delivered?

Ans. John P. Cook was requested by me to arrange these matters, and I thought that he had those papers transfered to me, and I being busy on the farm from the time I bought until I sold the place to E. Cook, and having full confidence in Mr. Cook I trusted to him the settlement, and I thought I could get them from him any time I called for them, and I had no occasion to call for them previous to the sale of the place to E. Cook, which was but a few days after I purchased the farm at the trustees' sale; this is why I never had those papers in my possession; I thought my lawyer, John P. Cook, would hand them to me when I called for them.

C. int. 46. In your negotiations with Ebenezer Cook for the sale of said farm to him, was anything said or agreed upon between you & him about the said note & deed of trust, or the balance due thereon; if so, what?

Ans. There was between me & Mr. E. Cook; I told him that
1397 those papers were with my lawyer, and that he could find out by him in regard to those transfers; I told him that I bought with the understanding that all those transfers were to be turned over to me, and that I had left them with his brother John P. Cook, my lawyer; I think he then said it was all right, providing the thing was as I stated it; he then steped into his brother's office, that was right adjourning, and when he came back told me that he understood the matter, and it was all right, and that he would give me $250 more than I paid for it; to which I replied that I would let him know in a day or so.

(Answer objected to by complainant as giving the declarations of the witness, & the other defendents Ebenezer Cook, in regard to matters not inquired of by the complainant in the examination of this witness, and that the declarations of the defendents are not competent in evidence in their own behalf.)

C. int. 47. In your bargain with said E. Cook was anything agreed upon or understood between you as to what was to be done with said deed of trust & note, or the balance due thereon; whether the
1398 same was to be retained by you or turned over to him; if so, what?

(Objected to by complainant for the same reasons as the answers to the last preceeding question, and that the enquirey calls for the witness's understanding of the conversation and not the conversation itself, and because the question is leading and suggestive of the answer.)

Ans. I did agree with Mr. Cook to sell him the farm and the interest that I had in the said balance of the note, the same as I got from Mr. Powers, the trustee; and that Mr. John P. Cook would deliver the papers to him, which were in the possession of said John P. Cook at the time.

C. int. 48. What conversation, if any, had you with Dennis Navin about

grass or hay other than that stated by you in your answer to the 58th int. on your re-examination?

Ans. I don't remember of any other.

C. int. 49. Look at the paper now shown you, and state whether or not it is the deed heretofore stated by you to have been executed to
1399 you by Antoine Le Claire, July 2d, 1861.

Ans. I think it is, sir, the same paper.

(The said deed is annexed by copy marked "Defendents' Exhibit C.")

C. int. 50. Look at the paper now shown you, and state whether or not the same was ever executed by you, and whether your signature thereto is genuine.

Ans. I have examined the said paper; it was executed by me, and the signature thereto is my genuine signature.

(The said paper is annexed by copy marked "Defendents' Exhibit D.")

1400 C. int. 51. State whether or not the deed or conveyance of July 2nd, 1861, by Antoine Le Claire and wife to you, refered to in said last-mentioned instrument, is the same mentioned in cross-interrogatory 49 and your answer thereto.

(Objected to by complainant.)

Ans. It is the same deed.

C. int. 52. Was said last-mentioned paper after its execution by you delivered by you to any one; and, if so, to whom and where?

(Objected to by complainant as immaterial.)

Ans. I dilivered it to the cashier of the State Bank, I think at its date, the 15th day of July, 1861; it might have been a few days later.

C. int. 53. Was the said paper ever returned to you; if so, when, by whom, and under what circumstances?

(Objected to as immaterial, as not within the scope of legitimate cross-examination, and as not an inquirey about any matter called out
1401 by the complainant upon the examination of this witness.)

Ans. It was returned to me by the cashier of the State Bank some time during 1863; can't tell when exactly; when Mr. Woodward the cashier, told me that the notes had been paid by the executor of Antoine Le Claire, and he wished me to deed those lands back to the executor, and I done so and he gave this paper back.

(All that part of this answer giving the declarations one Woodward, objected by complainant as hearsay evidence, and for that reason incompetent.)

C. int. 54. State if you know when and by whom the lines of erazure which appear to be drawn accrost the signatures to said paper were made.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. They were made by me some time after I received it from Mr. Woodward, the cashier.

C. int. 55. State whether or not you had any interest, directly
1402 or indirectly, in the indebtedness of $4,000 refered to in said paper; and, if so, what?

(Objected to for the same reasons as the 53d cross-int.)

Ans. I never had; never received a dollar of it.

C. int. 56. You speak in your re-direct examination of having had occasion to pass through the said farm several times before you purchased it at the trustee's sale; in what way or by what rout did you so pass through it?

Ans. Allen's Grove road divides the land pretty near in to; part of the land lies on the west side of the road, and the other part of it, with

the improvments, on the east side of the road, and it was by that rout or way I passed through it.

C. int. 57. Did you rely on your owen judgment of May's pecunary means and ability, or on the represention of others, in the openion which you have stated you entertained at the time of purchaseing said farm, that you could make the balance of the note secured by the trust deed out of May?

(Objected to for the same reasons as the 53d cross-interrogatory.)

1403 Ans. I relied upon my own judgment or opinion that I had at the time, that I could get it of him.

C. int. 58. You stated in your re-direct examination when asked in what counties the land conveyed to you by Antoine Le Claire, July 2d, 1861, were situate, that you believed some of it was in Muscatine County; will you now state what is the fact in regard to that, refreshing your recollection, if necessary, by reference to the deed?

Ans. Having no pecunnary interest myself in the matter, and acting only as trustee between the State Bank and Antoine Le Claire, and looking at the deed now before me, which I had not seen for some time, I find that I was mistaken in reference to Muscatine County.

(All this answer before the word "Le Claire," in the 4th line, objected to by complainant as not responsive.)

Re-re-direct interrog. No. 1 *to No.* 16.

Re-direct examination resumed:

Int. 1. Is the conversation with Ebenezer Cook, which you detail in answer to int. 46 in your 2nd cross-examination, the same conver-

1404 sation inquired about by the pl'ff on your direct examination in interrogatories 185 & 186, or is it another and seperate conversation?

(The questions & answers refered to are here read to the witness.)

Ans. It was about the same time that he told me that he would give me $250 more for the place than I gave for it; if my memory serves me right, it was at the same interview.

Int. 2. You do not fully answer the last question. Do you mean that the conversation refered to in cross-int. 46 is the same conversation refered to in your answer to 185 & 186 direct int.?

Ans. I don't recollect whether it was at the same conversation or not; I think it must have been at the time I told him he could have the land.

Int. 3. Do you mean that the conversation which you detailed in answer to cross-int. 46 occured at the time that you told Cook he could have the land?

1405 Ans. I mean to answer that it occured about the time I sold the land to Mr. Cook.

Int. 4. What do you mean by "about the time?" Do you mean a conversation occuring at the time the deed was delivered, or a conversation within a day or two of that time?

Ans. I mean to say that it was within 24 hours of the time the offer was made and the deed delivered.

Int. 5. Was the conversation of which your answer to cross-int. 46 is a part inquired about in your direct-examination? If so, state in what part of your direct-examination.

Ans. I don't recollect just now whether it was or not; it strikes me it was not; I don't think it was put to me before Mr. Rogers asked about

it; this being the 8th day that I have been bored here, it is hard for me to remember all the questions that have been put to me.

(All that part of the answer not responsive to the question is objected to by complainant's solicitor.)

1406 Int. 6. At the time of the agreement, which you state in answer to question 47, put to you by def'ts' solicitor, was made between you and Ebenezer Cook, had the deed of trust been assigned or the note it was given to secure been endorsed to you?

Ans. Being in the possession of my lawyer at the time, I don't remember to have seen it; I have no knowledge whether such assignment & endorsment had been made or not; I thought my lawyer would have it done; I had no occasion to call for them before I sold to Mr. E. Cook.

Int. 7. Can you now state that Chas. Powers ever endorsed to you the note secured by the deed of trust, or that he ever assigned the deed o trust to you?

Ans. I cannot state positively; I know that that was the condition, and I left the whole matter with my lawyer; and I don't remember of ever enquireing of my lawyer (John P. Cook) whether it had ever been done or not.

(All of this answer after the word "positively" in 1st line ob-

1407 jected to by comlp't as not responsive to the question.)

Int. 8. Did you ever execute a written assignment of that deed of trust, either to Ebenezer Cook or John P. Cook?

Ans. It was to E. Cook, I think.

Int. 9. Do you mean by your last answer to state that you signed or executed a paper assigning that deed of trust to Ebenezer Cook?

Ans. I do not; I don't remember of ever having executed such assignment.

Int. 10. Did you ever endorse the note, which the deed of trust from May to Powers was given to secure, to Ebenezer Cook?

Ans. I don't remember whether I did or not.

Int. 11. If you did endorse it, did you endorse it in such a man-

1408 ner as to be liable yourself, or did you endorse it without recourse?

Ans. I don't remember; I think if I endorsed it at all, it was without recourse on me.

Int. 12. State what your recollection is now as to whether you did or did not endorse that note to Ebenezer Cook.

Ans. I have no recollection at all in the matter; if my lawyer, Mr. Cook, asked me to sign it I done it; but being a transaction four or five years past, I do not remember.

(All this answer after the word "matter," in the 2nd line, objected to as not responsive to the question.)

Int. 13. Did you see the deed of trust from May to Powers, and the note secured thereby, at the time you executed the quitclaim deed to Ebenezer Cook?

Ans. If I did, I have no recollection of it.

Int. 14. Have you any personal knowledge that Powers ever assigned the deed of trust or endorsed the note to you?

1409 (Objected to because it has already been put and answered.)

Ans. I have no knowledge.

Int. 15. Look at the signature to defendents' Exhibit "C," and state whether or not the signature "A. Le Claire and M. Le Claire" are in the same handwriting.

(Objected to as immaterial.)

Ans. They look to me to be with the exception of the letter L.

Int. 16. Were you present when the signatures "A. Le Claire and M. Le Claire" were affixed to that instrument?
Ans. I don't think I was.

The further taking of these depositions is here adjourned until to-morrow, Thursday, March 10, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1410 After reading to the witness, Louis C. Dessaint, the foregoing examination, he wishes to correct his answer to 8th re-re-direct interrogatory as follows:
I thought the instrument refered to as having been assigned by me was the trustee's deed from Powers to me. I have no recollection that the deed of trust was ever assigned by me either to Ebenezer Cook or John P. Cook.

L. C. DESSAINT.

1411 The certificate of Rufus Linderman attached to the deposition of Geo. L. Davenport was made for this deposition of Louis C. Dessaint also, & covers both depositions. The depositions are separated for convenience in examining them.

W. G. WOODWARD,
Clerk C. C. U. S., Iowa.

1412 No. 12.

Supreme Court of the United States.

JAMES MAY
v.
THE EXECUTORS OF THE WILL OF ANTOINE Le Claire, and others.

The following papers consist of the deposition of Geo. L. Davenport alone.

1413 *Deposition of George L. Davenport.*

MARCH 10TH—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

George L. Davenport produced, sworn, and examined on the part of the complainent:

Int. 1. What is your name, age, place of residence, and occupation?
Ans. George L. Davenport; age, 46; reside at Davenport, Scott County, Iowa; am president of Merchant's Branch State Bank, and have an office for the transaction of my own business.

Int. 2. Are you acquainted with the parties to this suit; and, if so, how long have you known them?
Ans. Am acquainted with them; have known Capt. May since 1827; had been acquainted with Antoine Le Claire since 1828; have known John P. Cook, Ebenezer Cook, & George B. Sargent since 1838; have known L. C. Dessaint since about 1854.

Int. 3. Are you acquainted with Joseph A. Le Claire; if so, how long have you known him?

1414 Ans. Have known him since he was a boy, probably 20 years·

Int. 4. Had you dealings and business relations with Antoine Le Claire in his lifetime?

(Objected to as immaterial.)

Ans. From 1851 up to 1854 or 1855 we were engaged in the foundary business togather with some other parties; also in the iron business or in an iron store about the same time.

Int. 5. What were your personal and business relations with Antoine Le Claire for the last 3 or 4 years before his death, friendly and intimate, or otherwise?

(Objected to as immaterial.)

Ans. Friendly, but not intimate.

Int. 6. State whether or not you continued to do business with him up to about the time of his death.

(Objected to as immaterial, and also vague and indefinate, no pointing out what business or what kind of business is refered to.)

1415 Ans. My business relations with Mr. Le Claire ceased in about 1855.

Int. 7. Do you mean by your last answer that you had no dealings or business transaction with Antoine Le Claire after 1855?

(Objected to as immaterial.)

Ans. I mean I had none but casual dealings with him, the same as I had with other parties—no regular business.

Int. 8. Did you not, between the years 1857 & the time of Antoine Le Claire's death, have dealings and business transactions with him to a large amount?

(Objected to for the same reasons as the 6th interrogatory.)

Ans. I do not recollect of any dealings to a large amount from 1857 up to the time of his death.

Int. 9. Did you and he for several years prior to his death endorse each other's paper?

(Objected to as immaterial, impertenant, and not specifying any particular transaction intended to be enquired about.)

1416 Ans. I think we did after the year 1859.

Int. 10. Were you endorsers for each other during the year 1859?

(Objected to for the same reasons as the last preceeding questions.)

Ans. I think not during the year 1859.

Int. 11. Did not he (Antoine Le Claire) endorse paper for you during the year 1859?

(Objected to for the same reasons as the 9th interrogatory.)

Ans. I think not.

Int. 12. During the years 1859 & 1860 were you and Antoine Le Claire both directors of the Merchants' Branch of the State Bank of Iowa at Davenport?

(Objected to as immaterial.)

Ans. I was a director; Mr. Le Claire was a director for a time, but I don't know whether he was in 1859 & 1860; I don't know the date when he went out at present.

Int. 13. Was Mr. Le Claire a director of the Merchants' Branch
1417 of the State Bank during the first year after its organization?

(Objected to as immaterial.)

Ans. I think he was for a time; I don't know how long, whether it was a year or longer.

Int. 14. About what time did the first board organize?

(Objected to as immaterial.)

Ans. In the fall of 1858, I think, as near as I remember.

Int. 15. Do you not reollect that the directors first elected qualified on the 4th day of January, 1859?

(Objected to as immaterial.)

Ans. I don't recollect the date.

Int. 16. Did you have dealings and business transactions with the firm of Cook & Sargent for a year or two prior to the 16th day of December, 1859?

(Objected to as immaterial, and also as vague and indefinate,
1418 not specifying any particular transactions or kind of transactions.)

Ans. I kept an account with them, deposited with them, and bought my exchange of them, the same as any other customer; they also negotiated some paper for me; I also endorsed some paper for them, and accepted some paper for their accomodation.

Int. 18. Any other dealings or business transactions that you can name between you and that firm during that time?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I don't recollect of any other transaction previous to their failure in December, 1859.

Int. 19. Durring the year 1859 was Ebenezer Cook a director of this branch of the State Bank at Davenport?

(Objected to as immaterial.)

Ans. I think he was a director up to the time of the failure of Cook & Sargent a part of the year 1859.

Int. 20. Did the firm of Cook & Sargent at any time make
1419 an assignment to you and John W. Drury for the benefit of their creditors? If so, state about the time of said assignment.

(Objected to as immaterial.)

Ans. They made an assignment to J. W. Drury and myself, but I do not recollect the date; I think it was in the fall of 1860 or the winter of 1861; I am not positive about the date.

Int. 21. Did you accept the trust, and undertake the discharge of the duties of assignee of that firm?

(Objected to as immaterial.)

Ans. I did.

Int. 22. At the time you accepted the trust, were the books and papers of the firm of Cook & Sargent delivered to the assignees of that firm?

(Objected to as immaterial.)

Ans. I believe they were.

Int. 23. Have they since that time remained in the possession of the assignees?

1420 (Objected to as immaterial.)

Ans. They have.

Int. 24. Where are they now; in whose custody?

(Objected to as immaterial.)

Ans. They are in the hands of the assignees.

Int. 25. In what particular place, or in whose office, are those books & papers now?

(Objected to as immaterial.)

Ans. There are a part of them in the office of John L. Coffin, or the office of the assignees, and the balance of them are stored away in boxes in one of the upper rooms of my building.

Int. 26. In whose hands, or where now, are the books in which the firm of Cook & Sargent kept their accounts with their depositors in the year 1859?

(Objected to as immaterial.)

Ans. They are now in the hands of the assignees of Cook & Sargent; whether that particular book is boxed up or not I do not know.

1421 Int. 27. Will you, having control of the said books as assignee, produce before the examiner the books of said firm, containing the account kept by the firm of Cook & Sargent with Louis C. Dessaint, & with yourself, & with Ebenezer Cook, & with John P. Cook, for the purpose of having copies of the said accounts made as exhibits in this case?

(Objected to as immaterial.)

Ans. I wish to consult my council before answering that question.

The further taking of these depositions is here adjourned until to-morrow, March 11th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MARCH 11*th*—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 28. State, as near as you are able, the date of the assignments by Cook & Sargent to yourself & John W. Drury.

(Objected to as immaterial.)

Ans. The assignment was made on the 23d day of January, 1861.

1422 Int. 29. Was that assignment recorded?

(Objected to for the same reasons as the preceeding, & also as calling for a matter of record.)

Ans. It was.

Int. 30. Was the assignment executed to you & Drury, as stated, an assignment only of the partnership property of Cook & Sargent, or was it an assignment of the partnership property togather with an assignment of the individual property of John P. Cook & Ebenezer Cook?

(Objected to as immaterial, and also as calling for secondary evidence.)

Ans. The assignment was an assignment of Cook & Sargent of the assetts of the firm, and of the assetts of the individual members thereof.

Int. 31. State whether or not there was annexed to this assignment an inventory under oath of the real and personal estate of the assignors or debtors?

(Objected to for the same reasons as the last preceeding interrogatory.)

1423 Ans. I think there was.

Int. 32. Was there annexed a list of the creditors of the assignors, with an account of their respective demands?

(Objected to for same reasons as the 30th int.)

Ans. I do not remember at present whether there was a list or not, but I believe there was.

Int. 33. Did the assignees give any notice of this assignment by publication?

(Objected to as immaterial.)

Ans. They did.

Int. 34. In what papers?

(Objected to as immaterial.)

Ans. I think the publication was made in both the city papers in the city of Davenport, and probably in some other papers.

Int. 35. Was this an assignment of both real and personal estate?

(Objected to as immaterial.)

1423 Ans. It was.

Int. 36. State whether or not the assignees on the execution of

the assignment filed with the clerk of the district court an inventory and valuation of the real estate assigned under oath.

(Objected to as immaterial.)

Ans. I believe they did.

Int. 37. State whether or not any bond was executed by the assignees to the clerk, for the use of the creditors.

(Objected to as immaterial.)

Ans. There was the usual bond filed for the faithfull performance of the duties of the assignees.

Int. 38. State whether or not, at the expiration of three months from the first publication of the notice, the assignees reported and filed with the clerk of the district court a list under oath or affirmation of such creditors of the assignors as had at that time claimed to be such creditors, with a statement of their respective claims.

1424 (Objected to as immaterial.)

Ans. I am unable to say whether that was done or not. Judge Drury attended to the principal part of the business, he understanding the requirement of the law.

Int. 39. State how many dividends, if any, have been made to creditors under this assignment.

(Objected to as immaterial.)

Ans. I do not recollect whether there was one or two dividends made.

Int. 40. Has the real estate vested in the assignees by the assignment been disposed of by them?

(Objected to as immaterial.)

Ans. I believe that the assetts, both real and personal, have all been disposed of by the assignees.

Int. 41. Have the assignees been discharged by any order or action of the court?

(Objected to as immaterial.)

1425 Ans. I believe they have, but I am not certain, for the reason that Judge Drury attended to the business in court.

Int. 42. Had Cook & Sargent, between the 1st day of December, 1859, and the date of this assignment, conveyed or mortgaged to yourself, or to Antoine Le Claire, large quantities of real estate?

(Objected to as immaterial.)

Ans. The firm of Cook & Sargent, through its members, conveyed several peices of property to myself in that time, and I believe they did to Mr. Le Claire.

Int. 43. Was this property that you speak of in your last answer as having been conveyed to you by the firm of Cook & Sargent by its members property owned by Cook & Sargent, or was it the individual property of the members of the firm?

(Objected to as immaterial.)

Ans. I believed it was owned by the firm of Cook & Sargent, but was conveyed in the names of the individual members of the firm.

1426 Int. 44. Did either John P. Cook or Ebenezer Cook, after the 1st day of December, 1859, and before the date of this assignment, execute to you conveyances of any individual property claimed to be owned by them respectively?

Ans. Ebenezer Cook deeded to me property that belonged to him individually in a seperate and individual transaction, asside from the transaction mentioned in relation to Cook & Sargent in a previous answer. John P. Cook did not convey to me any individual property during the time specified.

Int. 45. State about the date of the conveyance or conveyances executed to you by the members of the firm of Cook & Sargent, as stated by you in your answer to the 42nd interrogatory.

(Objected to as immaterial.)

Ans. I do not remember the date just now, but can furnish them.

Int. 46. Was the property conveyed to you by Cook & Sargent,
1427 as stated in your answer to int. 42, city property or farming lands, or both?

(Objected to as immaterial.)

Ans. It was both town property and farming lands.

Int. 47. Where was the city or town property situated?

(Objected to as immaterial.)

Ans. It was situated in the town of Davenport, in the town of Fulton, Iowa; in the town of Camanchie, and in the town of Florence, Nebraska.

Int. 48. Where were the farming lands situated or located?

(Objected to as immaterial.)

Ans. They were located in the counties of Scott, Muscatine, & Clinton, and also lands in Nebraska; I don't remember the counties.

Int. 49. State the quantity or amount of farming land conveyed to you by the firm of Cook & Sargent, as stated by you in answer to int. 42, as near as you are able.

1428 (Objected to as immaterial.)

Ans. I think it was five 80s in Clinton County, three of which it turned out they had no tittle to; one 80 in Scott County, which was incumbered by mortgages previous to their title; & three 80s in Mucatine County; and about 1,000 acres in Nebraska, as near as I can recollect?

Int. 50. How many lots in the city of Davenport did they convey to you?

(Objected to as immaterial.)

Ans. Seven or eight, I think.

Int. 51. How many in Fulton?

(Objected to as immaterial.)

Ans. I think five lots, and an undivided interest—not quite a $\frac{2}{3}$ interest—in about five lots, and also a tract of 24 acres in said town of Fulton.

Int. 52. How many lots in Florance, Nebraska, and in the town of Camanchie, did they convey to you?

1429 (Objected to as immaterial.)

Ans. A $\frac{1}{4}$ interest in 10 or 12 lots in the town of Camanchie. I have an undivided interest in the town of Florance; I don't know the number of lots; I get whatever interest Cook & Sargent had in the town.

Int. 53. Did Ebenezer Cook execute to you more than one conveyance in his individual name between the 1st day of December, 1859, and the date of the assignment of Cook & Sargent to you & John W. Drury?

(Objected to as immaterial.)

Ans. I do not remember of more than one.

Int. 54. Did the firm of Cook & Sargent, between the 1st of December, 1859, and the date of this assignment to you, transfer or assign to you any notes, mortgages, or securities of any kind?

(Objected to as immaterial.)

Ans. They transfered to me one judgment against Burrows &
1430 Prettyman, also some notes of Burrows & Prettyman given to Cook & Sargent for purchase of lands in Muscatine, Scott, & Clinton Counties, and also the property in Fulton & Camanchie, the said Cook & Sargent having given to them, Burrows & Prettyman, bonds for deeds on the payments of said notes. These whole matters were

assigned to me, and the lands I have mentioned in my previous answer as having been conveyed to me by Cook & Sargent, through its members, are the same lands covered by those bonds to Burrows & Prettyman.

Int. 55. What was the amount of the judgment assigned to you against Burrows & Prettyman, stated in your last answer?

(Objected to as immaterial.)

Ans. The amount of the judgment, I think, was about $7,000, and it was assigned to me after the failure of Burrows & Prettyman.

Int. 56. Were there any other choses in action transfered to
1431 you by the firm of Cook & Sargent, except those mentioned in your answer to int. 54?

(Objected to as immaterial.)

Ans. I don't remember of any others at present.

Int. 57. Did they, between the 1st of December, 1859, & the 1st of January, 1861, transfer to you any chattels or personal property of any kind?

(Objected to as immaterial.)

Ans. I don't recollect of any.

Int. 58. Did Ebenezer Cook or John P. Cook, between December 1st, 1859, and the date of the assignment, transfer to you any individual notes or securities held by them respectively?

(Objected to as immaterial.)

Ans. There was a note or judgment, I don't recollect which, transfered to me by Ebenezer Cook, I think against Capt. May, for about $3,500, I think; am not certain.

Int. 59. Do you not recollect that the assignment of this note or
1432 judgment was made by John P. Cook after he had commenced an action upon it in the United States circuit court for the northern district of Illinois?

(Objected to as immaterial, leading, and because the witness has already given his recollection.)

Ans. I do not recollect that it was, at this time.

Int. 60. Have you in your possession the assignment of that note or judgment to you?

Ans. I suppose the assignment is on file in the court; I have never seen it myself.

Int. 61. Was the assignment of it ever delivered to you?

Ans. I think it was turned over to my attorney or attorneys.

Int. 62. Who were they?

Ans. Judge Drurey attended to it in court.

1433 Int. 63. About what time was this judgment assigned to you?

Ans. I don't remember; I think in the winter of 1860.

Int. 64. Was it at the time or before or after the execution of the conveyance to you by Ebenezer Cook, mentioned in answer to your 44th interrogatory?

Ans. I don't recollect whether it was at that time or afterwards.

Int. 65. Were Drury and John P. Cook partners at the time that the assignment of this judgment was turned over to your attorney as stated by you in answer to interrogatory 61?

Ans. I don't remember, but I think the firm of Cook & Drury was formed afterwards.

Int. 66. You say in answer to question 60 that you "suppose the assignment is on file in the court." Do you mean the court in which the judgment was recovered? If not, state in what court.

1434 Ans. I suppose the judgment and assignment is on file in the

Rock Island court. Judge Drury was directed to see if he could make the judgment off of Capt. May in Rock Island County.

Int. 67. Do you mean with the clerk of the circuit court of Rock Island County?

Ans. I don't know that to be the fact; I only suppose it is there.

Int. 68. Are you one of the executors of the last will and testament of Antoine Le Claire?

Ans. I am.

Int. 69. Have you, as such executor, the custody & control of the deeds and conveyances made and executed to Antoine Le Claire prior to his death, and after the 1st day of January, 1859?

(Objected to as immaterial.)

Ans. I suppose I have all his papers and deeds, and such things.

1435 Int. 70. Have you in your possession and custody, as such executor, a mortgage on real estate for $70,000, executed by Cook & Sargent to Antoine Le Claire about the 16th day of December, 1859?

(Objected to as immaterial.)

Ans. I have no recollection of ever seeing such a mortgage amongest the papers.

Int. 71. Have you any knowledge or information that such a mortgage as that inquired about in the last question was ever executed by Cook & Sargent to Antoine Le Claire?

(Objected to as immaterial and calling for hearsay.)

Ans. I have not.

Int. 72. Have you in your possession and custody, as such executor, one or more conveyances of real estate, executed by the firm of Cook & Sargent, or the members of said firm, to Antoine Le Claire in the year 1859 or 1860?

(Objected to as immaterial.)

1436 Ans. I believe there is some such conveyances among the deeds of Mr. Le Claire.

Int. 73. How many such conveyances have you in your custody, executed by the firm of Cook & Sargent, or the members of said firm, to Antoine Le Claire.

(Objected to as immaterial.)

Ans. I do not know how many we have. I have no recollection whether we have one or more.

Int. 74. Have you in your custody and possession, as such executor, conveyances of real estate, executed by either of the individual member of the firm of Cook & Sargent to Antoine Le Claire in the year 1859 or 1860?

(Objected to as immaterial, and because it has already been answered.)

Ans. I can't remember exactly what deeds we have. There are so many deeds, that I can't be posetive about it.

Int. 75. State what you know, if anything, in regard to the transfer and assignment of notes and mortgages, or securities of any kind,

1437 by the firm of Cook & Sargent, or by the individual members of said firm, to Antoine Le Claire during the year 1859 or 1860.

(Objected to as immaterial, vague, and indefinate, not pointing out any particular assignment, nor mortgage, or other security, and also as calling for parole evidence of matters of which better evidence exists, if such matters exists, or were done at all.)

Ans. I do not know of any such transfers of any notes or mortgage. I was not present at any settlement between Mr. Le Claire and Cook & Sargent.

Int. 76. Have you in your possession or custody, as such executors, any notes, mortgages, or securities of any kind, assigned by the firm of Cook & Sargent, or by either or any of the members of said firm, to Antoine Le Claire prior to his death and after the 1st day of January, 1850?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not recollect of any in my possession.

1438 Int. 77. Did you, as executor of the estate of Antoine Le Claire, for the purpose of offering the same for sale, cause to be printed a list of lands & lots conveyed by Cook & Sargent to Antoine Le Claire?

(Objected to as immaterial, and because it involves an inquirey for parole proof of conveyances of real estate, of which there is better evidence, if such conveyances were made.)

Ans. I have no knowledge or recollection of ever having any such list printed. We have used some old list that we found among the papers of Mr. Le Claire that were made before his death.

Int. 78. Are you acquainted with J. W. Harrisson, a land agent of the city of Davenport?

Ans. I am.

Int. 79. Do you know of his having one of the lists refered to in your answer to interrogatory 77?

(Objected to as immaterial.)

1439 Ans. I think he had a list. We, the executors, furnished a list to several of the land agents, with the prices marked on the margin.

(Exhibit "R," mentioned & refered to in the deposition of J. W. Harrisson, is here shown to the witness, and, after his inspection of the same, the following interrogatory is put to him, to wit:)

Int. 80. Look upon the paper now shown you, and state whether that is or is not a list of the lands refered to by you in your answer to interrogatories 77 and 79.

(Objected to as immaterial.)

Ans. It is.

Int. 81. Have you, as executor of Antoine Le Claire, in your possession and custody a deed executed by James May to Antoine Le Claire in March, 1859?

(Objected to as immaterial.)

Ans. I have no recollection of having any such deed.

1440 Int. 82. Are you acquainted with the farm and premises known as Rose Bank?

Ans. I am.

Int. 83. Have you in your possession or under your control, as executor, a conveyance of that farm, executed by James May to Antoine Le Claire some time in the spring of 1859?

(Objected to as immaterial.)

Ans. I have no recollection of there being any such deed in the possession of the executors.

Int. 84. Have you any knowledge or information that such a deed was executed?

(Objected to as immaterial, and calling for hearsay and parole evidence of the contents of a written instrument.)

Ans. I have no knowledge or information of such a deed.

Int. 85. Have you in your possession and custody, as such executor, a mortgage executed by Adrian H. Davenport to Antoine Le Claire, upon land in "Le Claire's reserve," so called?

1441 (Objected to as immaterial.)

Ans. I have no recollection of having such a mortgage in my possession; there may be. I have so many mortgages I do not remember.

Int. 86. Do you recollect of ever having seen among the papers in your care and custody, as executor of Antoine Le Claire, a deed, signed by Antoine Le Claire and wife, purporting to convey to James May certain lands in the Le Claire reserve?

(Objected to as immaterial.)

Ans. I do not.

Int. 87. Have you any knowledge or information that such a deed or conveyance as that mentioned in the last interrogatory was signed by Antoine Le Claire?

(Objected to for the same reasons as the 84th int.)

Ans. I have not.

1442 Int. 88. Did you, as executor of the estate of Antoine Le Claire, receive any papers belonging to his estate from John P. Cook or Ebenezer Cook, or the firm of Cook & Sargent, or either of said firm?

(Objected to as immaterial.)

Ans. We received from Cook & Lindly notes in their hands for collection. Of Cook & Sargent, or E. Cook, I do not remember of receiving any.

Int. 89. Did you at any time learn that an agreement of settlement had been made and entered into by and between Antoine Le Claire and James May some time in the spring of 1859?

(Objected to as immaterial and calling for hearsay.)

Ans. I have no personal knowledge of such an agreement, only from hearsay.

Int. 90. When and from whom did you first learn that such an agreement had been made and entered into between May & Le Claire?

1443 (Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I have no recollection just now when I first heard it, or from whom.

Int. 91. Had you heard of it before the commencement of this action?

Ans. I think I had.

Int. 92. Can you state about how long it was after this agreement was entered into that you heard it had been made; whether within a few weeks or months?

(Objected to because it implies that the agreement was made of which the witness has stated he has no knowledge.)

Ans. I think it must have been in the forepart of the summer of 1859.

Int. 93. Do you recollect now from whom you first learned that such an agreement had been made?

(Objected to as immaterial and because the question has already been answered.)

Ans. I do not.

1444 Int. 94. Do you now recollect any person that you heard speak about that agreement early in the summer of 1859?

(Objected to as immaterial, and of a mere fishing or prying character.)

Ans. I do not.

Int. 95. Do you recollect any person that you ever heard speak about it?

(Objected to as frivelous and impertenant.)

Ans. I do not recollect any particular person.

Int. 96. When you heard this agreement spoken of, early in the summer of 1859, what did you then understand this agreement was, or what it contained?

(Objected to as immaterial, calling for hearsay, and calling for the understanding of the witness, which is not evidence.)

Ans. I understood it was some kind of an exchange of Rose Bank farm for Le Claire property.

1445 Int. 97. Did you understand at that time whether or not deeds for this exchange had been executed by the parties?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I did not.

Int. 98. Did you understand that a part of the consideration of this agreement on the part of Antoine Le Claire was the transfer to May of certain notes, and a mortgage, securing the same, executed by Adrian H. Davenport to Antoine Le Claire?

(Objected to for the same reasons as the 96th int.)

Ans. I so understood.

Int. 99. At the time you heard of this agreement, as stated by you, early in the summer of 1859, did you hear whether or not the agreement provided for the removal of any incumbrances upon the property exchanged by either of the parties?

(Objected to as immaterial and calling for hearsay.)

1446 Ans. I understood that May was to pay off the incumbrances upon Rose Bank farm; whether I learned this in the early part of the summer of 1859 or some other time, I do not now remember.

Int. 100. Within what time did you learn that May, under this agreement, was to remove the incumbrance from Rose Bank?

(Objected to as immaterial and calling for hearsay, and because it does not relate to the witnesses' understanding at any particular time.)

Ans. I think I understood it was to be done within one year from the agreement.

Int. 101. Did you learn or understand what was done with the agreement between May & Le Claire after it was executed?

(Objected to as immaterial, calling for hearsay, and because it does not call for the witnesses' information at any particular time, or period of time, before or since the commencement of this suit.)

1447 Ans. I understood it was left in the hands of Cook & Sargent.

The further taking of these depositions is here adjourned until to-morrow, Saturday, March 12th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

SATURDAY, *March 12th*, 1864—9 *o'clock, a. m.*

Examination resumed pursuant to adjournment.

Int. 102. Did you understand at the time you heard of this agreement, as stated by you, that Antoine Le Claire had delivered to May a large number of notes on divers persons which he had received from Adrian H. Davenport, as collaterals to the said mortgage refered to in interrogatory 98?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I did not.

Int. 103. Did you ever receive, as executor, a number of notes that were delivered by Adrian H. Davenport to Antoine Le Claire, as

1448 collatterals to the mortgage refered to in interrogatory 98, and the answer thereto?

(Objected to as immaterial, and because it involves not only the receipt of notes by the witness, but also their delivery to said Le Claire by said A. H. Davenport; a fact of which it does not appear that the witness has any personal knowledge.)

Ans. I have no personal knowledge of any notes delivered by Adrian H. Davenport to Antoine Le Claire.

Int. 104. Is the answer just given by you to int. 103 the only answer you can make to that interrogatory?

(Objected to because the witness has answered the preceeding interrogatory, and his answer being responsive, the council is not entitled to put to him the present question.)

Ans. It is.

Int. 105. Do you know Adrian H. Davenport, of Le Claire?

Ans. I do.

1449 Int. 106. Have you, as executor, since the death of Antoine Le Claire, employed Adrian H. Davenport to assist you, or to act for you, in procuring the settlement of certain notes originally given to said Davenport, for sales of lots & lands in the "Le Claire reserve," and which had been received by Antoine Le Claire in his lifetime from said A. H. Davenport, as collaterals to the mortgage referred to in int. 98, and the answer thereto?

(Objected to for the same reasons as interrogatory 103)

Ans. We have employed Adrian H. Davenport as agent to collect notes belonging to the estate of Antoine Le Claire, but have no personal knowledge whether the said notes were taken as collatterals to any mortgage or not.

Int. 107. Did you, as executor, receive and take into possession, as property belonging to the estate of Antoine Le Claire, a number of notes, executed by different purchasers or persons to Adrian H, Davenport, for lands or lots purchased of him in the "Le Claire reserve?"

(Objected to as immaterial, and involving facts of which it does
1450 not appear the witness has any personal knowledge.)

Ans. As executors, we took possession of all the notes and papers belonging to the estate of Antoine Le Claire. Among them were a number of notes given by persons in Le Claire, and indorsed by Adrian H. Davenport, and which, I think, were given for lots or lands purchased of A. H. Davenport in the said reserve.

Int. 108. How came you to suppose that these notes belonged to the estate of Antoine Le Claire?

(Objected to as frivelous and impertenant.)

Ans. They were in the hands of his attorney, and delivered to me as his property.

Int. 109. Who was the attorney that delivered to you these notes?

(Objected to as immaterial.)

Ans. I think they were delivered to me by Cook & Drury.

1451 Int. 110. Which of the firm of Cook & Drurey delivered them to you?

(Objected to as immaterial.)

Ans. I think John P. Cook.

Int. 111. Did he at the time deliver to you any other papers belonging to the estate of Antoine Le Claire?

(Objected to as immaterial.)

Ans. I do not remember of any other papers except the notes he had on hand for collection.

Int. 112. Do you recollect of his delivering to you an agreement en-

tered into between, and executed by, Antoine Le Claire and A. H. Davenport, about the 27th day of March, 1860?

(Objected to as immaterial.)

Ans. I do not.

Int. 113. Look upon Exhibit "E" annexed to complainant's bill, and state whether or not the notes you received from John P. Cook are mentioned in that exhibit.

1452 (Objected to as immaterial and also as calling for parole evidence of the contents of written instruments.)

Ans. I am unable to tell from recollection, but I think some of them are the notes we received.

Int. 114. Will you state whether, at the time you received from John P. Cook the notes stated by you, you received any endorsed by A. H. Davenport and payable to him which are not included in that list?

(Objected to as immaterial.)

Ans. I am unable to say from recollection.

Int. 115. Had you at any time prior to the receipt of these notes from John P. Cook by you, learned how, or by what right, they were held or received by Antoine Le Claire?

(Objected to as immaterial, and calling for hearsay.)

Ans. I do not recollect that I did. I have no personal knowledge of it.

1453 Int. 116. Were you not informed by Adrian H. Davenport of the circumstances under which they were transfered to Antoine Le Claire, before you received them from John P. Cook?

(Objected to as calling for hearsay and immaterial.)

Ans. I do not recollect whether he so informed me or not.

Int. 117. About what time did you receive these notes from John P. Cook?

(Objected to as immaterial.)

Ans. I do not remember the exact time. I think five or six weeks after the death of Mr. Le Claire.

Int. 118. Did you call upon Cook for these notes, or did he deliver them to you without any application on your part?

(Objected to as immaterial.)

Ans. I do not remember. I think we notified all the attorneys to turn over all notes they had in their hands, so that we could make an inventory of them

1454 Int. 119. Where were they (the notes) delivered to you by John P. Cook?

(Objected to as immaterial.)

Ans. I think they were delivered at the office of the executors.

Int. 120. Did he, at the time he delivered to you these notes, also deliver to you a deed of lands in the Le Claire reserve, or of lands on an island some three miles below Le Claire and on the mainland opposite to said island on the Iowa side, which had been executed by Antoine Le Claire and wife to James May?

(Objected to as immaterial, and calling for parole evidence of the contents of a written instrument.)

Ans. He did not.

Int. 121. Did he at the time say anything about having such a deed in his possession?

(Objected to as immaterial, and calling for declarations which are not evidence in the case.)

1455 Ans. He did not.

Int. 122. Had you learned from Cook prior to that time, or from

any other person, that he or the firm of Cook & Sargent had such a deed in their possession?

(Objected to as immaterial and calling for hearsay.)

Ans. I did not.

Int. 123. Did John P. Cook, or Cook & Sargent, at the time of the delivery of these notes to you, or at any other time, deliver to you the agreement between Antoine Le Claire & James May, which you have heretofore stated on this examination was, as you understood, deposited with Cook & Sargent?

(Objected to as immaterial.)

Ans. They did not.

Int. 124. Did you ask him, or the firm of Cook & Sargent, at any time to deliver that instrument to the executors?

(Objected to as immaterial.)

1456 Ans. I did not.

Int. 125. Why did you not claim and take possession of that instrument as one belonging to the estate of Antoine Le Claire?

(Objected to as frivelous & impertenant.)

Ans. Because I understood that that contract or agreement was cancelled and at an end, and of no account to the estate.

Int. 126. From whom did you learn that that agreement was cancelled and at an end, as stated in your last answer?

(Objected to as immaterial, and calling for hearsay.)

Ans. I do not recollect particularly from whom I got the information. That was my general impression.

Int. 127. When did you get the information?

(Objected to for the same reasons as the last preceeding question.)

Ans. I am unable to state at what time.

1457 Int. 128. Was it before or after the death of Antoine Le Claire?

(Objected to as immaterial, and calling for hearsay.)

Ans. I am unable to state, but I think it was before the death of Mr. Le Claire.

Int. 129. How or in what way did you understand that this agreement was cancelled, as stated by you in answer to question 125?

(Objected to as immaterial, and calling for hearsay and the witnesses' understanding, which is not evidence.)

Ans. I can only state from rumor & hearsay that Mr. Le Claire had made a legal tender to comply with his part of the contract.

(Answer objected by defendents' solicitor as stating matters of rumor & hearsay, which are not evidence.

And complainant's solicitor objects to the answer as not responsive to the question.)

Int. 130. You state in answer to question 126 that you do not

1458 recollect particularly from whom you got the information. Will you state whether you derived such information from those persons connected with the transaction or having the agreement on deposite and who would be likely to know the facts, or was it a mere rumor?

(Objected to as immaterial, calling for hearsay, and also as not specifying any person or persons as the source of the information inquired about, but undertaking to describe them in general terms as persons who would be likely to know about the fact; thus calling for the mere opinion or inference of the witness, and not any matter of fact.)

Ans. I do not recollect; but think it was from general talk or rumor.

Int. 131. Had you, prior to the receipt of the notes delivered to you by John P. Cook, had any conversation with the defendents Cook &

Sargent, or Antoine Le Claire, or either of them, in regard to the cancelation of this agreement between May & Le Claire, refered to in your answer to interrogatory 125?

1459 (Objected to as immaterial.)

Ans. I do not recollect that I ever had.

Int. 132. Can you now name any person from whom you received the information that the said agreement had been canceled?

(Objected to as immaterial, and because the question has already been answered.)

Ans. I cannot.

Int. 133. You say in answer to 125th interrogatory, that the reason why you did not claim or take possession of this agreement was because you understood the agreement had been canceled; and you say in answer to int. 131, that you do not recollect of having received this information from either Cook & Sargent or Antoine Le Claire; and in answer to int. 130th, that your information on that subject was derived from general talk or rumor. Do you now mean to say, or be understood, that your mearly having heard this rumor is the

1460 reason why you did not claim or demand this agreement from John P. Cook?

(Objected to as immaterial, and because the question represents the witness as having stated what he has not stated.)

Ans. The general impression on my mind from general reports and rumor was that that contract was canceled, & it never occured to me to make any inquiry for it.

(Answer objected to by comp't's solicitor as not responsive to the question.)

Int. 134. Can you give any other reason why you did not claim and take possession of this agreement than those stated in your answer to interrogatory 125 and in answer to the last interrogatory?

(Objected to as immaterial and improper, the witness having already fully answered the question.)

Ans. I cannot now remember of any other.

1461 Int. 135. Had you learned or been informed through any other chanel, or by any other means, than the general talk & rumor that you have mentioned, at the time you received from John P. Cook the notes executed to A. H. Davenport, & by him endorsed to Le Claire, that that agreement had been canceled as stated in your answer to interrogatory 125?

(Objected to as immaterial and calling for hearsay.)

Ans. I do not recollect that I did.

Int. 136. Do you not recollect that in April or May, 1860, an action was commenced by Antoine Le Claire against Adrian H. Davenport & others in the district court of Scott County to foreclose the mortgage refered to in interrogatory 98 put to you on this examination, and that you were one of the parties defendent in that suit?

(Objected to as immaterial and calling for parole evidence of matters which are of record, if they exist at all.)

Ans. I do not remember of being a party to any such suit, unless it was as a judgment creditor.

1462 Int. 138. Were you a party as a judgment creditor or otherwise in an action in the Scott County district court commenced by Antoine Le Claire in the spring of 1860 to foreclose said mortgage from A. H. Davenport to Le Claire?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not recollect whether I was or was not.

Int. 139. The original notice in a cause purporting to have been commenced in the Scott district court to foreclose a mortgage against A. H. Davenport and others is here shown to the witness for the purpose of refreshing his recollection, and interrogatory 138 was then repeated to the witness.

(Objected to because the matter inquired about in the question is one which cannot be proved by the parole evidence of this witness.)

Ans. I was defendent only as a judgment creditor.

1463 Int. 140. Did you learn at or about that time how this mortgage which you say, in your answer to the 98th int. put to you, you understood was transfered to May came to be foreclosed by Antoine Le Claire?

(Objected to as immaterial, calling for hearsay, and representing the witness to have stated what he has not stated.)

Ans. I have no recollection whether I did or did not.

Int. 141. Did you, after the notice in that case was served upon you, make any inquiries of Antoine Le Claire, the plainiff in the suit, or of Cook & Drury, his attorney, or of Cook & Sargent, with whom the said mortgage was deposited, in regard to the said mortgage or the foreclosure of it by Antoine Le Claire?

(Objected to as immaterial and frivilous.)

Ans. I do not recollect that I did.

1464 Int. 142. Did you at that time, while this mortgage was being foreclosed, have or receive any knowledge or information that the agreement between May and Le Claire had been canceled?

(Objected to as immaterial and calling for hearsay.)

Ans. I have no recollection whether I had heard anything at that time that gave me the impression or not.

Int. 143. You stated in answer to an interrogatory put to you upon this examination that you heard of this agreement between May & Le Claire in the forepart of the summer of 1859; and in answer to int. 95 you say that you do not recollect any person that you heard speak about it. At that time was this agreement a matter of public notoriety and conversation, or was it only talked about by a few?

(Objected to as immaterial, & because the answers of the witness refered to in said interrogatory are not therein correctly stated, but are garbled.)

Ans. I don't remember, but I think it was quite public.

1465 Int. 144. Did you hear it spoken of frequently in the forepart of the summer of 1859, or only occaisonally?

(Objected to as immaterial and calling for hearsay.)

Ans. I do not recollect, but I think I did occaisonally; I can't tell how many times.

Int. 145. Are you acquainted with the defendent Louis C. Dessaint?

Ans. I am.

Int. 146. Was he a director of the Merchants' Branch of the State Bank in 1859?

Ans. He was.

Int. 147. Were you also a director at that time?

Ans. I was.

Int. 148. Did you attend the meeting of the board of directors in the year 1859?

Ans. I attended the most of them.

Int. 149. Did Dessaint attend the meeting of the board at that time?

1466 Ans. I think he generally did.

Int. 150. State whether there ever was at any time, to your knowledge, any conversation in regard to that agreement between May & Le Claire at a meeting of the board of directors, in the presence of L. C. Dessaint.

(Objected to as immaterial, and because it does not confine the conversation inquired about to any particular time or period of time.)

Ans. I do not recollect that there ever was.

Int. 151. Was there at any time, to your knowledge, any conversation in relation to that agreement by any of the members of your board of directors in the presence of Louis C. Dessaint?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not remember that there was.

Int. 152. Was there ever any conversation, to your knowledge,
1467 in regard to the said agreement by any of the members of your board of directors at any meeting?

(Objected to for the same reasons as the 150th interrogatory.

Ans. I do not remember of any.

Int. 153. Has not your recollection been refreshed by your examination so that you are now able to name some one person that you heard speak of this agreement in the forepart of the summer of 1859?

(Objected to as immaterial.)

Ans. It has not.

Int. 154. Can you state any place where, or any time when, you heard it spoken of in the forepart of the summer of 1859?

Ans. I do not recollect any particular place or time in 1859.

Int. 155. Where did the complainant, James May, reside prior to the making of this agreement between him and Antoine Le Claire?

1468 Ans. I think he lived part of the time in Pittsburg and part of the time in Iowa.

Int. 156. Where was he and his family living in 1858, & up to March, 1859?

Ans. I think he lived on Rose Bank farm, but don't remember whether that was the year or not.

Int. 157. About what time (as your recollection serves) did he leave Rose Bank farm?

Ans. I do not recollect what time he left it.

Int. 158. State who went into the occupation of the farm when he left it.

Ans. I do not remember whether an Irishman named Navin went into the occupation of it directly after he left it or not.

Int. 159. When and for what time did Navin occupy the premises?

1469 Ans. I do not know.

Int. 160. Do you know of his living on the premises during any portion of the year 1859?

Ans. I think he lived there in the summer of 1859.

Int. 161. Did he put in a crop upon the premises in the spring of 1859?

Ans. I think he did.

Int. 162. How long did he stay there?

Ans. I think he remained there until some time in March, 1860.

Int. 163. Can you state who lived upon the premises immediately before Navin took possession?

Ans. I am under the impression, but am not certain, that a Mr. King lived there.

Int. 164. What King?

1470 Ans. I don't remember his first name—whether it was John or Richard.

Int. 165. Is he a son-in-law of Capt. May?

Ans. I think he is.

Int. 166. Were not May and he both living upon the premises at the same time.

Ans. I do not remember whether they were or not.

Int. 167. Who worked and cultivated the farm from the spring of 1858 to the spring of 1859?

Ans. I don't know as I have any personal knowledge who did work it that year. It may have been Capt. May and it may not.

Int. 168. Do you recollect whether you first heard of this agreement before or after Navin went into the possession or occupation of Rose Bank in the spring of 1859?

(Objected to as immaterial.)

Ans. I do not recollect whether it was before or after.

1471 Int. 169. State who put Navin into possession of Rose Bank, or made an agreement with him for the occupation of it for the time he occupied it.

(Objected to because it does not appear that the witness has any knowledge on the subject.)

Ans. I have no personal knowledge who put him into possession, or what agreement was made with him.

Int. 170. Do you not know under whom he occupied, and with whom he shared the profits of the farm.

Ans. I have no personal knowledge.

Int. 171. Do you mean to say that you have no personal knowledge that any portion of the crop raised upon Rose Bank was taken from the farm in the fall of 1859 and winter of 1859 & 1860, by Joseph A. Le Claire?

Ans. I mean that I only know it by hearsay.

(Answer objected to by def'ts' solicitor as giving hearsay,

1472 which is not evidence.

Int. 172. Was there a deed of these Rose Bank premises executed to you about the middle of December, 1859?

Ans. There was.

Int. 173. Was a great portion of the corn crop raised on the premises that year then on the farm.

Ans. I do not know.

Int. 174. Was there not a great portion of the corn crop raised on the premises in the year 1859 on the premises until or about the 1st of February, 1860?

Ans. I don't remember of being on the place until after that date, and don't know whether it was or not.

The further taking of these depositions is here adjourned until Monday, March 14th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1473 MONDAY, *March 14th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 175. State under whom Navin, that you speak of, occupied the premises.

(Objected to as not calling for any fact within the witnesses' knowledge, but for a mixed conclusion of law and fact.)

Ans. I have no personal knowledge under whom he occupied it. All the knowledge I have is from hearsay.

Int. 176. Did you know Navin was occupying the premises when you received a deed of the same from Ebenezer Cook?

Ans. I did.

Int. 177. Did you take that deed without inquiring or ascertaining by what right or authority Navin was occupying the premises?

(Objected to as immaterial.)

Ans. I do not recollect whether I made those inquireies or not.

1474 (Answer objected by complainant's solicitor as only in part responsive.

Int. 178. Did you know before, or did you ascertain at the time, that you received a deed of Rose Bank from Ebenezer Cook, by what right or authority Navin was occupying the same, or for what period of time he was entitled, under such authority, to occupy the same?

(Objected to as immaterial, and calling for hearsay.)

Ans. I did not.

Int. 179. Did you take a deed of Rose Bank from Cook, knowing that Navin was in possession, without inquirey of Cook as to the right under which Navin occupied, or the time he was to occupy, the premises?

(Objected to as immaterial, and because the question has been already answered.)

Ans. I did.

Int. 180. Did you feel any interest in learning by what right

1475 or authority Navin was occupying the premises, or for how long a period he was entitled to occupy them, at the time you recovered your deed from Cook?

(Objected to as immaterial and frivilous.)

Ans. I do not recollect that I did.

Int. 181. Did you take a deed of the farm (Rose Bank) without knowing or inquiring when Navin's occupation of the premises would end, or you be entitled to the possession?

(Objected to as immaterial.)

Ans. I did.

Int. 182. What connection, if any, so far as you know, had Joseph A. Le Claire with Rose Bank during the time that Navin was in occupation of it?

Ans. I understood that they were farming it on shares; that is, that Joseph A. Le Claire & Navin were.

(Answer objected to by def'ts' solicitor as stating the understanding of the witness, which is not evidence.)

1476 Int. 183. How or in what way did you understand they were working it upon shares?

Ans. I don't recollect whether I heard it from Joe Le Claire or Navin, or from other parties.

Int. 184. Can you now say whether you ever received any information in regard to the working of the farm on shares by Joseph A. Le Claire & Navin from Joseph A. Le Claire?

(Objected to as immaterial and because the declarations of the said Le Claire are not evidence against these defendents.)

Ans. I do not remember.

Int. 185. Were the premises worked during the time Navin was in occupation, by him alone, or him & J. A. Le Claire jointly?

(Objected to as immaterial.)

Ans. I do not know, of my own knowledge.

Int. 186. In what business was J. A. Le Claire engaged from the spring of 1859 to the spring of 1860?

1477 Ans. I do not recollect, but I think he was in the iron business.

Int. 187. Where?

Ans. I think he was in the store now occupyed by Sickles & Preston in Davenport.

Int. 188. Do you know of his having acted as the business agent of Antoine Le Claire at any time; and, if so, when?

Ans. He attended to business for Mr. Le Claire for several years; I cannot tell exactly how many.

Int. 189. Did he have an office as agent of Antoine Le Claire?

Ans. I think not.

Int. 190. Where did he do his business as such agent?

Ans. He done his business at the office of Mr. Antoine Le Claire.

Int. 191. Was Antoine Le Claire usually present during business
1478 hours at the office, giving his personal attention to his business during the years 1858, 1859, 1860, and the forepart of the year 1861?

(Objected to as immaterial.)

Ans. He generally was.

Int. 192. Did you at any time learn what the agreement was under which Navin occupied these premises (Rose Bank) and shared the profits with J. A. Le Claire?

(Objected to as calling for hearsay.)

Ans. I do not recollect that I did.

Int. 193. Did you at any time learn whether Navin occupied under an agreement with J. A. Le Claire as landlord, or that they jointly occupied under some one else?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not know, of my own knowledge; I only know from hearsay, and am unable to state where I got the information.

(Ans. Objected to by complainant's solicitor as not responsive to the question.)

1479 Int. 194. Interrogatory 193 repeated.

(Objected to for the same reasons as the 192d interrogatory.)

Ans. I wish to strike out my last answer and say I did not.

Int. 195. You stated in answer to int. 193 that you only know from hearsay; did you learn what the agreement was inquired for in int. 193 in any manner or from any sourse?

(Objected to as immaterial and calling for hearsay.)

Ans. I don't think I did.

Int. 196. Why did you then state in answer to int. 193 that you only knew it from hearsay?

(Objected to as immaterial and because the answer refered to has been withdrawn by the witness and another given in its place.)

Ans. Because I did not understand the full meaning of the question.

1480 Int. 197. If you never heard of the agreement inquired about in int. 193, as you state, in answer to 195, you think you did not, why did you state in answer to int. 182 that you understood that they (Le Clair & Navin) were farming it (Rose Bank) on shares.

(Objected to because there is nothing inconsistant in the two answers refered to in the question, the agreement refered to in int. 193 being as to a diferent matter than as to whether they were farming on shares or not, to wit, as to the person under whom as landlord the premises were occupied.)

Ans. I do not recollect of knowing anything about any agreement between the parties.

(Answer objected to as not responsive.)

Int. 198. Had you understood that Joseph A. Le Claire & Navin were farming Rose Bank on shares, at the time you received the deed of the farm of Ebenezer Cook, or did you receive that information afterwards?

Ans. I had not at the time I received the deed, but I may have
1481 understood previous to that that him & Navin was farming togather from report.

Int. 199. Had you learned that they were farming it (Rose Bank) togather in any way at the time you received the deed of it from Cook, or was the report that you speak of subsequent to the deed from Cook to you?

(Objected to as immaterial and calling for hearsay.)

Ans. I received no information at the time I received the deed of the occupancy of the farm; I only knew of it from report previous to the deed.

Int. 200. Had you any knowledge as to who was occupying the premises when the deed was executed by Cook to you?

Ans. I had the knowledge, as I stated before, that Navin was occupying the farm.

Int. 201. How did you derive that knowledge?

(Objected to as immaterial.)

Ans. I do not recollect, only from general report.

1482 Int. 202. When you took this deed from Ebenezer Cook, did you expect or suppose that you were entitled to the possession of Rose Bank from and after its execution?

(Objected to because the witnesses' expectations or suppositions are immaterial to any issue in this cause.)

Ans. I did not.

Int. 203. When did you understand and suppose that you would be entitled to possession?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I expected to have possession on the first day of March following.

Int. 204. Did you have or assume any control of it (Rose Bank) before the 1st day of March, subsequent to the date of Cook's deed to you?

(Objected to as immaterial.)

Ans. I had no possession, but claimed ownership (of course) from the time of making the deed.

1483 (Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 205. Did you enter unto or upon, or take possession or control of, Rose Bank, or receive any rents therefor, before the first day of March, after the date of Cook's deed to you?

(Objected to as immaterial.)

Ans. I believe not.

Int. 206. Did you make any effort to get Navin, then on the farm, to give up his possession before his time expired?

(Objected to as immaterial.)

Ans. I do not recollect that I did.

Int. 207. How near was your place of business to the office of Antoine Le Claire in the summer of 1859.

(Objected to as frivelous.)

Ans. My place of business was in the Davenport Block. I had an office there, & I think Mr. Le Claire's place of business was in the
1484 banking-room of Maclot & Corbin at that time; about the length of a square from my office.

Int. 208. Had you any buisness dealings or transactions with Antoine Le Claire during the year 1859, and after the forepart of March in that year?

(Objected to as immaterial, and as vague and indefinate, not specifying any particular transactions or kind of transactions.)

Ans. I do not recollect of any.

Int. 209. Do you recollect of having had any dealings or business transaction during that period with Joseph A Le Claire, as the agent of Antoine Le Claire?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not remember of any; I may have had.

Int. 210. Did you have any dealings or business transactions with Joseph A. Le Claire, as the agent of Antoine Le Claire, between
1485 the spring of 1859 and the time of Antoine Le Claire's death?

(Objected to for the same reasons as the 208th int.)

Ans. I do not recollect of any.

Int. 211. Did you have any dealings or business transactions with Antoine Le Claire during the year of 1860?

(Objected to for the same reasons as the 208 int.)

Ans. I think it is likely that I had.

Int 212. Do you recollect whether you had or not?

(Objected to for the same reasons as the 208 int.)

Ans. I think I had.

Int. 213. Had you dealings and business transactions with him during the year 1861, and prior to his death in that year?

(Objected to for the same reasons as the 208th int.)

Ans. I think it is likely I had.

1486 Int. 214. Do you recollect whether you had of not?

(Objected to for the same reasons as the 208th int.)

Ans. I think I had.

Int. 215. After the spring of 1859 did he endorse your paper, or did you endorse his?

(Objected to as immaterial.)

Ans. I did not during the year 1859 endorse for him nor he for me.

Int. 216. Did you endorse for each other during the year 1860 or 1861?

(Objected to as immaterial.)

Ans. We did during the years 1860 & 1861.

Int. 217. State whether you endorsed for him to a large amount, or only to a limited extent, during those years.

(Objected to as immaterial.)

Ans. I think only to a limited extent.

1487 Int. 218. For about what amount did he endorse for you during those two years?

(Objected to as immaterial.)

Ans. Probably $15,000.

Int. 219. For about what amount did you endorse for him during the two years 1860 & 1861?

(Objected to as immaterial.)

Ans. Probably $5,000 or $6,000.

Int. 220. Were there any loans made by him to you, or by you to him, during the years 1859, 1860, or 1861?

(Objected to as immaterial.)

Ans. I do not recollect of any.

Int. 221. During those three years last named did he execute to you, or you to him, any deeds of real estate?

(Objected to as immaterial.)

Ans. I do not recollect of any.

Int. 222. During either of those three years did he negotiate &
1488 transfer to you, or you to him, any negotiable paper?

(Objected to as immaterial.)

Ans. I do not recollect of any.

Int. 223. So far as you know, was the notes and papers executed by Antoine Le Claire signed by Antoine Le Claire in person, or by Joseph A. Le Claire, his business agent?

(Objected to as immaterial.)

Ans. So far as I know, they were always executed by Mr. Antoine Le Claire.

Int. 224. During the years 1860 or 1861 were there any written agreement entered into between you and Antoine Le Claire for the conveyance of any real estate by him to you or by you to him?

(Objected to for the same reasons as 208th int.)

Ans. I don't recollect of any.

Int. 225. You state in answer to int. 182 that you understood that J. A. Le Claire & Navin were farming Rose Bank on shares. Now, after
1489 the execution of the deed by Cook to you, did you make any inquirey of Joseph A. Le Claire as to the manner & terms under which he & Navin were working the farm?

(Objected to as immaterial.)

Ans. I do not recollect that I did.

Int. 226. Did you make any inquirey of him after the date of the deed from Cook to you as to the length of time Navin was entitled to the premises?

(Objected to as immaterial.)

Ans. I do not recollect whether I did or did not.

Int. 227. How and from whom did you learn, if at all, that Navin's right to the possession expired, and that you would be entitled to the possession, after March 1st, 1860?

(Objected to as immaterial and calling for hearsay.)

Ans. I don't recollect; I may have heard it from Navin.

1490 Int. 228. If you heard it from Navin, was it before or after the date of the deed from Cook to you?

(Objected to as immaterial.)

Ans. I think it must have been after.

Int. 229. Did you see Joseph A. Le Claire frequently for several months subsequent to the execution of this deed by Cook to you?

(Objected to as immaterial.)

Ans. I saw him probably every week, or maybe two or three times a week.

Int. 230. Why did you not inquire of him by what right and upon what terms he & Navin were farming Rose Bank on shares?

(Objected to as immaterial and as assuming that the witness did not enquire, which has not been testified to.)

Ans. I may have made inquiries of him, but I have no recollection of doing so.

Int. 231. If you had inquired of Joseph A. Le Claire about it, would you not be likely to recollect it?

1491 (Objected to as immaterial, and as calling for the mere inference or opinion of the witness, and not for any matters of fact.)

Ans. I don't know that I should.

Int. 232. Did you learn or understand that Le Claire & Navin at the time spoken of by you were occupying these premises under Capt. May?

(Objected to as immaterial, and calling for hearsay.)

Ans. I think all my understanding about it from report was that they were farming the place on some kind of shares.

Int. 233. Did you understand whether they went in the occupation of the place under Capt. May, or under the authority of somebody else?

(Objected to for the same reasons as the last preceeding int.)

Ans. I did not.

Int. 234. Can you now state, having your attention called to the
1492 matter by this examination, the name of any person who gave you the information in regard to the occupation of Rose Bank by Joseph A. Le Claire & Navin, or when you derived such information?

Ans. I cannot.

Int 235. Did you, after the receipt of this deed from Ebenezer Cook, and on or about the 13th day of January, 1860, commence an action in the district court of Scott County against James May for the purpose of quieting or settling the title to Rose Bank farm?

Ans. I think my attorney commenced such suit during that winter.

Int. 236. State whether or not the petition in that case was sworne to by you.

(Objected to because the record is the best evidence.)

Ans. I don't recollect anything about it.

(The council for the complainant here presented to the witness
1493 what purported to be the petition in an action commenced in the district court of Scott County by this witness as plaintiff, and against James May, as defendent, and then put to him the following:)

Int. 237. Please look upon the paper now shown you, and refresh your recollection therefrom, and then state whether you did or did not swear to the petition in that action.

(Objected to because the fact inquired about is one which cannot be proved by any witness, but only by the record, and also as immaterial.)

Ans. I believe I did.

Int. 238. You say, in answer to the last interrogatory, that you believe you did swear to the petition; can you not state positively whether you did or not?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I see my signature to the oath, and that it was sworn to.

(Answer objected to by complainant as not responsive to the question.)

1494 Int. 239. Interrogatory 238 repeated.

(Objected to for the same reasons as interrogatory 237, and because it has already been answered.)

Ans. I did swear to it.

Int. 240. What title to, or interest in, Rose Bank did you understand May to claim or to have, and which you desired to quiet or remove, when you commenced the action and swore to this petition?

(Objected to as immaterial, and because the same appears in the petition itself refered to.)

Ans. I cannot tell without examining the petition, as I don't remember.

The further taking of these depositions is here adjourned unil 9 o'clock a. m. to-morrow, March 15th, 1864.

R. LINDERMAN, *Com'r.*

MARCH 15TH, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

1495 Int. 241. If you have no recollection on the subject independant of the petition, please examin the petition, and then state.

(Objected to as immaterial.)

Ans. It was from a paper recorded by Capt. May, setting forth that the trustee's deed was fraudulent; and other matters stated in that paper which cast a cloud upon my title.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 242. What title to, or interest in, Rose Bank did you understand that May had, or claimed to have, when you commenced your action in the district court to quiet title, or remove the cloud?

(Objected to as immaterial.)

Ans. I did not consider that he had any title; I understood that he claimed the title because the sale under the trust deed was fraudulant.

1496 Int. 243. What sale do you refer to in your last answer?

Ans. I refer to a sale under the trust deed to Louis C. Dessaint.

Int. 244. About what time was that sale?

(Objected to because there is better evidence, to wit, documentary.)

Ans. The sale was made some time in the summer of 1859.

Int. 245. About what time in the summer?

Ans. I have no knowledge, except from the papers, and by them it was in July; I don't remember the date in July.

Int. 246. Did you understand, at the time you commenced this action against May in the district court to quiet the title, that the only title to, or interest in, Rose Bank which he claimed, was that the sale by the trustee was fraudulant?

(Objected to as immaterial, and as equivocal, obscure, and an obvious attempt to entrap the witness.)

1497 Ans. The information I had was based upon the paper recorded by Capt. May in the recorder's office, setting forth his claim to the property.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 247. Do you mean, by your answer to the last interrogatory, to say that the paper recorded by Capt. May in the recorder's office stated or set forth what his claim of title to or interest in Rose Bank was?

(Objected to as calling for parole evidence of the contents of a written instrument, and for the same reason as the last preceeding interrogatory.)

Ans. I mean to say that the suit was commenced on account of that paper being on record, and in the way of my selling the property to good advantage.

(Complainant objects to this answer as not responsive to the question.)

Int. 248. Interrogatory 247 repeated.

1498 (Objected to for the same reasons as interrogatory 247, and as asking the witness to give a construction to a written instrument not produced in evidence.

Council for defendents advises the witness that he is not bound to answer the question without the paper refered to is shown him.

And complainant insists that the witness shall give an answer to the question without an examination of the paper, and protests against any interfearance with the examination of the witness on the part of the council, by giving any instructions as to how and when he shall answer.)

Ans. I understood that he claimed the [the] sale by Powers to Dessaint to be fraudulant and illegal.

(Answer objected to by the complainant as not responsive to the question.)

Int. 249. Do you mean by your answer to interrogatory 247 to say that

the paper recorded by Capt. May in the recorder's office stated or set forth what his claim of title to, or interest in, Rose Bank was?

1499 (Objected to for the same reasons as the 248th interrogatory.)

Ans. I mean to be understood that Capt. May claimed in that paper that the deed by Powers to Dessaint was obtained by fraud, and that the sale was illegal.

Int. 250. State whether or not a copy of this instrument, which you refer to in answer to int. 247, was annexed to your petition sworn to by you in the case of yourself against James May to quiet title.

(Objected to because the record is the best evidence.)

Ans. There was.

Int. 251. State whether or not that copy is marked as an exhibit; and, if so, what exhibit?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. It is marked as Exhibit "E."

Int. 252. State whether you have examined and read that exhibit.

(Objected to as immaterial.)

1500 Ans. I have.

Int. 253. When did you read and examin it?

(Objected to as immaterial.)

Ans. I read it yesterday and to-day, and I may have read it when it was attached to the papers.

Int. 254. Will you now state what claim or title you understood that May had or asserted to Rose Bank, at the time you commenced the action against him to quiet title in the district court of Scott County?

(Objected to as immaterial, calling for the understanding of the witness, which is not evidence, and because the question has already been put and answered repeatedly.)

Ans. I don't know as I am able to state by what title he claimed, unless it was by his title upon record at that time; that is, the original deed to him.

Int. 255. You state in answers to interrogatories put to you on

1501 this examination, that you learned in the forepart of the summer of 1859, that an agreement had been entered into between May & Le Claire, by the terms of which May had agreed to sell Rose Bank to Le Claire, and was to have a year to remove the incumbrances thereon; now, did the title to or interest in, which you understood May to assert to, Rose Bank at the time of your commencment of the suit mentioned in the last interrogatory, arrise from his orriginal ownership, or from this agreement between him & Le Claire, or from both such ownership & agreement?

(Objected to, first, as immaterial; second, because the witness's statements in prior answers are not correctly given in said interrogatory, but are garbled; third, because the question is uninteligable and absurd, it being impossible for a contract to convey land to give the party so contracting to convey any title or interest in the land; fourth, because the question asks for no fact, but only a matter of inference, understanding, construction, or legal effect.)

1502 Ans. I did not know anything about Capt. May's title before the land came into my hands.

(Answer objected to by complainant as not responsive to the question.)

Int. 256. Did you commence the action against May in the district court of Scott County for the purpose of settleing and adjudicating some claim or title asserted by May to Rose Bank, which you supposed constituted a cloud upon your title thereto?

(Objected to because the pleading and record in said suit are the best evidence of the purposes for which it was commenced.)

Ans. The suit was commenced on account of this paper or notice of May's that was placed upon record, which it was considered made a cloud upon the title.

(Answer objected by complainant as not responsive to the question.)

Int. 257. Can you give any more direct or explicit answer to the last interrogatory, No. 256?

1503 (Objected to for the same reasons as interrogatory 256.)

Ans. The allegation in said paper made a cloud upon the title.

Int. 258. Can you give any more direct or explicit answer to int. 256 than that given by you in answer thereto, and in answer to int. 257?

(Objected to for the same reasons as int. 256, and because question 256 has been twice answered.)

Ans. I don't believe I can.

Int. 259. Did you understand, at the time you commenced said suit against May, that the filing or recording of that instrument refered to by you in answer to int. 256 constituted a cloud upon your title to Rose Bank?

(Objected to as immaterial.)

Ans. I understood very little about it; from what I did understand, there was something on record that might interefear with or effect the sale of it.

1504 Int. 260. Was that suit commenced to get rid of this instrument refered to, and its effect upon your title?

(Objected to because the record is the best evidence for the purpose for which the suit was commenced.)

Ans. That suit was commenced to take off the cloud from the title, if there was any.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 261. Interrogatory 260 repeated.

(Objected to for the same reasons as the last preceeding question.)

Ans. I might say that it was to get rid of that instrument which I supposed made a cloud upon the title.

Int. 262. Was it commenced for any other purpose or object than that stated in your last answer? If so, state what.

(Objected to for the same reasons as the 260th interrogatory.)

Ans. I do not recollect of any other.

1505 Int. 263. Did you understand at the time you commenced said suit against May that the instrument filed and recorded by May, and refered to by you in the previous answer, was such a legal or valid instrument as constituted a cloud upon your title?

(Objected to as immaterial, and as assuming what is not true, to wit, that clouds upon titles can only be constituted by legal & valid instruments.)

Ans. I understood it was not legal or valid; still, that it cast a cloud upon the title.

Int. 264. State about how long it was after the deed from Ebenezer Cook to you before this action was commenced.

(Objected to because the said deed, togather with the record in said suit, are the best evidence.)

Ans. I do not recollect; I think probably a month afterwards; I am not certain; it might have been a year & a month; I am not certain whether it was in the winter of 1860 or 1861.

1506 Int. 265. Was it commenced before or after the expiration of

the year which May was to have under his agreement with Le Claire, to remove the incumbrances from Rose Bank, as stated by you in answer to interrogatories 99 & 100 on this examination?

(Objected to because the record of said suit, togather with the agreement refered to in the interrogatory, constitute the best evidence, and further because the witness does not appear to have any personal knowledge of the said agreement or its date.)

Ans. The suit was commenced on the 12th day of January, 1860; I do not know the date or time that the agreement spoken of expired.

Int. 266. Did you know whether that agreement had expired or was in force when you received the deed for Rose Bank from Ebenezer Cook?

(Objected to as obscure and ambiguous, in not stating clearly whether the expiration of the year to remove incumbrance is ment by the
1507 qustion, or some other expiration or termination is ment by it.)

Ans. I do not recollect of knowing anything about it at that time.

Int. 267. Did you, at the time you received the deed for Rose Bank of Ebenezer Cook, inquire, or take any steps or make any effort to ascertain, whether or not the time which you understood May had under his agreement with Le Claire to remove the incumbrances had expired?

(Objected to as immaterial.)

Ans. I do not recollect that I did.

Int. 268. Did you, at the time you commenced the suit against May, take any steps or make any effort to ascertain whether or not the year which you understood May had under his agreement with Le Claire to remove the incumbrance upon Rose Bank had expired?

(Objected to as immaterial.)

Ans. I do not recollect that I did.

1508 Int. 269. Did you learn of the sale of Rose Bank by Powers, as trustee, to the defendent Dessaint, about the time the sale occured?

Ans. I do not recollect that I did.

Int. 270. About when did you first hear of the sale by Powers to Dessaint?

Ans. I do not recollect the time, but think it was a short time afterwards.

Int. 271. Do you recollect of hearing it spoken of shortly after it occured by Powers and Dessaint, at the State Bank in Davenport?

Ans. I do not.

Int. 272. Did you at any time hear that May complained that a fraud had been practiced upon him in this sale?

(Objected to as not fixing any time, or period of time, whether before or after the commencment of this suit.)

Ans. I cannot recollect particularly, but think I did hear reports of that kind.

1509 Int. 273. Had you learned of those reports before your answer in this case was prepaired and filed?

(Objected to as immaterial.)

Ans. I do not recollect; it may be likely that I had heard them before.

Int. 274. Did you hear them before or after you commenced the suit against May in the district court of Scott County, in January, 1860?

(Objected to as immaterial.)

Ans. I do not recollect the time, but think it was before.

Int. 275. Did you hear them before or after the date of the deed from Ebenezer Cook to you on the 16th of December, 1859?

Ans. I do not recollect what time I heard of them, whether it was before or after; it might have been before.

Int. 276. Do you not recollect that during the latter part of July & the month of August, 1859, that the claim on the part of May, that
1510 he had been defruded in this sale, was a matter of public and open notoriety and conversation?

(Objected to as assuming a state of facts of which there is no evidence, and improper in form on direct examination.)

Ans. I do not recollect whether I heard it at that time or afterwards.

Int. 277. Are you acquainted with B. B. Woodward, of the city of Davenport?

Ans. I am.

Int. 278. Do you recollect, in August or September, 1859, having a conversation with two or three persons in the building in which the State Bank was then kept, and in the presence of said Woodward, in regard to the sale by Powers to Dessaint under the trust deed?

Ans. I have no such recollection.

Int. 279. Do you not recollect, on or about the 21st of July, 1859, of being present at the office of the State Bank in Davenport, at
1511 a conversation between Charles Powers and Louis C. Dessaint in regard to the sale to Dessaint under the trust deed, at which conversation B. B. Woodward was also present?

Ans. I do not recollect of it.

Int. 280. State when and where and from whom you first heard that May claimed that the sale under the trust deed was fraudulent.

Ans. I do not recollect where, nor of whom, or when.

Int. 281. You state in your answer in this case that you aver, on information and belief, that said May (complainant) had actually under his control, or in his possession, no means or funds whatever; that he had made a conditional bargain with his friend from Pittsburgh to loan him the sum of $6,000, and no more; state when and from whom you received this information that he had made a conditional bargain
1512 with his friend from Pittsburgh to loan him the sum of $6,000, and no more?

(Objected to as wholly immaterial, frivolous, and impertinent; the witnesses' sources of information of averments in his answer, made on information & belief, not being admissable in evidence for any purpose.)

Ans. I do not recollect at this time from whom I got the information, nor when.

Int. 282. Did you receive this information from any person connected with the transaction refered to in you answer, and who you believed at the time knew about the facts, or was it derived from mere rumor and hearsay?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not now recollect whether it was from persons who knew the facts or from rumor.

1513 Int. 283. Was this matter avered in your answer upon information and belief that he (May) had made a conditional bargain with his friend from Pittsburgh to loan him the sum of $6,000, and no more, talked about shortly after the sale under the deed of trust, or not until several months afterwards?

(Objected to as immaterial.)

Ans. I do not remember what time.

Int. 284. How long after the sale before you first heard of it, according to your present recollection?

(Objected to as immaterial.)

Ans. I do not now recollect whether it was a week, a month, two months, or three months after the sale.

Int. 285. Do you now think and believe that it was within three months after the sale?

(Objected to as immaterial.)

Ans. I do not recollect the time; I should think it must have been shortly after the sale.

1514 Int. 286. What do you mean by shortly after the sale, as stated in your last answer; do you mean within a week, or a month, more or less?

Ans. I have no recollection of the time, whether it was a week, or a month, or three months.

Int. 287. Will you now state whether, according to your present recollection, you received the information inquired about in int. 283 within two or three months after the sale?

(Objected to as immaterial.)

Ans. I do not recollect the time I received the information; I think likely it was within that time, but do not know; it is mere guessing.

Int. 288. If you had no recollection about it, why did you give the answer that you did to interrogatory 284?

Ans. Because I believe it was about that time, without knowing precisely the particular time.

1515 Int. 289. Was the person of whom you received the information inquired about in int. 283 talking about this sale under the trust deed at the time he imparted this information?

(Objected to as immaterial.)

Ans. I do not recollect.

Int. 290. Do you recollect what information you did receive from him at that time, if any, except the information in regard to the $6,000?

(Objected to as immaterial and calling for hearsay.)

Ans. I do not recollect whether I received any information from one or two persons, or from general report.

(Answer objected to by complainant as not responsive to the question.)

The further taking of these depositions is here adjourned until to-morrow, March 16th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1516 WEDNESDAY, *March 16th*, 1864, 9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 291. State whether or not the denials in your answer, which are made upon information & belief, are made upon information received from any of the defendents in this suit?

(Objected to as immaterial and frivolous, and also as too vague and general, not specifying any particular denial.)

Ans. I do not recollect that they are.

Int. 292. Do you recollect whether they are or not?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not.

Int. 293. You state in your answer that, upon information and belief, you deny that after said Powers had returned to Davenport from Pittsburgh, or at any time, said John P. Cook called upon him, and re-

1517 quested & urged him not to have or influence any bidders to come to the sale of said farm to be made under said trust deed. From whom did you receive the information upon which you base that denial?

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I do not recollect any particular person from whom I received that information; I based the denial upon general information & talk.

Int. 294. Did you not receive that information from the defendent John P. Cook, or from Charles Powers?

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I do not recollect that I did.

Int. 295. Do you recollect of ever inquireing of them or either of them whether Cook had called upon Powers, & requested & urged him not to have or influence any bidders to come to the sale of said farm?

(Objected to as immaterial, frivolous, and impertenant.)

1518 Ans. I do not recollect that I did.

Int. 296. State, as near as you can, about the time you received this information upon which you base the denial inquired about in interrogatory 293.

(Objected to as immaterial, frivolous, and impertenant.)

Ans. I do not recollect what time I received it.

Int. 297. State about what time.

(Objected to as immaterial, frivolous, and impertenant.)

Ans. I think in the fall of 1859, but am not certain.

Int. 298. Do you now recollect any person from whom you received such information?

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I do not.

Int. 299. In your answer, you state that "this defendent avers,
1519 on information and belief, that said Dessaint, actually and in good faith, paid out of his own proper funds the whole amount due on said trust deed, amounting to over $7,000 for said farm, and that he purchased the same in good faith for his own use and benefit, without any intention of transfering the said farm to the said Le Claire, or any other defendent herein." Did you receive the information upon which you base that denial from the def'ts Louis C. Dessaint? If not, state from whom you did receive it.

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I think my information and belief was based partly upon information I received from Mr. Dessaint, and upon a general knowledge of Mr. Dessaint's means.

Int. 300. Do you now recollect of receiving any information in regard to that matter set forth in your answer from the defendent Dessaint?

1520 (Objected to as immaterial, frivolous, and impertinant.)

Ans. I recollect that he often expressed a desire to buy a farm before the sale of Rose Bank, and also since.

(Objected to as not responsive.)

Int. 301. Interrogatory 300 repealed.

(Objected to for the same reasons as int. 300.)

Ans. I do not recollect that I did.

Int. 302. Can you state from whom you did receive the information?

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I do not recollect.

Int. 303. Did you not receive the information from Ebenezer Cook?

(Objected to as immaterial, frivelous, and impertenant.)

Ans. I do not recollect that I did.

1521 Int. 304. Did you receive the information from either of the defendents in this suit?

(Objected to as immaterial, frivolous, and impertenant.)

Ans. I do not recollect that I did.

Int. 305. You state in your answer that "this defendent, on information & belief, denies that any plan whatever had been arranged, or was conducted, either stelthery and fraudulently, or otherwise, by the agents or attorneys of said Le Claire, or by his co-opperation or confederacy, or by any of the defendents herein, to effect a sale of said farm, and secure a purchase of it to any confederate or attorney of said Le Claire." State who gave you the information that no such plan had been formed, and upon which you base this denial in your answer.

(Objected to as immaterial, frivelous, and impertenant, the witness's sources of information as to either denial or averments in his answer made on information & belief being wholly foreign & impertenant
1522 to any issue in this case.)

Ans. I never heard of any such plan.

Int. 306. Did you ever hear that there was not any such plan?

(Objected to for the same reasons as the last preceeding interrogatorry.)

Ans. I had heard that the plaintiff (Capt. May) had charged that there was such a plan.

Int. 307. Did you ever hear either of the defendents say anything about whether any such plan existed or not?

(Objected to for the same reasons as the 305th interrogatory.)

Ans. I do not recollect, but I think I have always heard the defendents deny that such plan existed.

Int. 308. What do you mean by that part of your last answer in the words "I do not recollect?" Do you mean that you do not recollect whether you ever heard them speak on the subject or not?

1523 (Objected to as immaterial, the last question and the answer thereto being alike incompetent and inadmissable as evidence.)

Ans. I mean that I have heard them speak on the subject, but do not recollect the conversation. The impression on my mind is that I have always heard them deny the accusation.

(The last part of this answer objected to by the complainant as not responsive to the question.)

Int. 309. Do you now recollect of having had conversation with either of the defendents on the subject? and, if so, state with which of them.

(Objected to as immaterial.)

Ans. I think I have had conversation with the most of them.

Int. 310. Name with which of them you have had conservation in regard to it.

(Objected to for the same reasons as the 305 interrogatory.)

1524 Ans. I do not recollect which one.

Int. 311. Name any one of them that you do recollect of having had any conversation with upon the subject.

(Objected to for the same reasons as the 305th interrogatory.)

Ans. I am unable to name any one of them particularly, but think I have had conversation with all of them.

Int. 312. About when did you have a conversation with Ebenezer Cook upon this subject?

(Objected to as immaterial.)

Ans. I do not recollect when.

Int. 313. How long after the sale of Rose Bank under the trust deed?

Ans. I do not recollect; I think likely about the time this suit was commenced.

Int. 314. When did you have conversation with Antoine Le Claire upon this subject?

1525 (Objected to as assuming that the witness had a conversation with Antoine Le Claire on the subject, which does not appear in evidence.)

Ans. I don't recollect at what time.

Int. 315. Will you now state whether you did or did not have a conversation with Antoine Le Claire and the other defendents on the subject just enquired about?

(Objected to as immaterial.)

Ans. I do not recollect what conversations I had with parties at this time.

Int. 316. Do you not recollect of a conversation between you & Antoine Le Claire in regard to the charge made by May, that a plan or combination had been entered into by the defendants to effect a sale of Rose Bank?

(Objected to as immaterial.)

Ans. I do not recollect it.

Int. 317. Do you recollect of having a conversation with the
1526 defendent Louis C. Dessaint, in regard to the charge made by May, that a combination or conspiracy had been formed between the defendents to effect a sale of Rose Bank?

(Objected to as immaterial, and because the witness has already stated that he cannot specify any particular defendent with whom he had had such conversation.)

Ans. I do not recollect of any particular conversation with Louis C. Dessaint.

Int. 318. Do you recollect of having conversed with him on the subject, without being able to call to mind any particular conversation?

(Objected to for the same reasons as the last interrogatory.)

Ans. I do not.

Int. 319. State now whether you have or have not a recollection of having conversed with either of the defendents in regard to the
1527 claim made by May in his bill in this case, that a conspiracy had been formed to effect the sale of Rose Bank.

(Objected to as immaterial, frivelous, and impertenant.)

Ans. I do not recollect of any particular conversation with any of the parties.

Int. 320. The last inquirey does not call for a particular conversation, and I repeat the substance of it and ask you to state now whether you do or do not recollect of having conversed with the defendants, or either of them, in respect to the charge made by the complainant, May, in his bill in this case, that a combination or conspiracy had been formed to effect a sale of Rose Bank under the trust deed?

(Objected to as containing an assertion of counsel, and also for the same reasons as the last preceeding interrogatory, and also because the question has been repeatedly answered by the witness.)

Ans. I think I have, but do not recollect what these conversations were.

1528 Int. 321. When did you first learn of the filing & recording of this notice in the recorder's office by Capt. May, a copy of which you state was annexed to your petition as Exhibit "E," in the suit of yourself against Capt. May?

Ans. I don't recollect what time I heard of it exactly; I think it was in the fall of 1859.

Int. 322. How long was it before the date of the deed from Ebenezer Cook to you?

Ans. I do not recollect how long before.

Int. 323. Was it a week or a month, more or less?

Ans. I cannot tell.

Int. 324. What is your present recollection, if you have any, as to the time?

Ans. From my present recol'ection I understood there was something filed there previous to the deed to me, but I do not think I was aware of its contents until afterwards.

1529 Int. 325. At the time you understood something was filed there, as stated in your last answer, did you understand that it was some instrument or paper filed by May relating to Rose Bank, or to the frauds practiced upon him in the sale thereof?

Ans. I do not recollect what I heard about it.

Int. 326. Will you state what you do recollect of hearing about it?

Ans. I do not recollect of hearing anything about it, except that Capt. May had put some paper or notice on record; I do not recollect of hearing of its contents until after I had got the property.

Int. 327. To what property, if to any, did you understand that this notice related or applied?

Ans. To the Rose Bank farm.

1530 Int. 328. Can you now state who the person was that communicated to you the information, before the date of the deed from Cook to you, that such paper had been filed or recorded in the recorder's office by Capt. May?

Ans. I cannot.

Int. 329. Do you reollect about the time or date of the execution of the deed by Ebenezer Cook to you?

(Objected to because the deed is the best evidence.)

Ans. I think the deed is dated the 16th day of December, 1859.

Int. 330. Was that before or after the failure of Cook & Sargent?

Ans. I think they failed, or their doors were closed, that morning.

Int. 331. When did you first learn that Ebenezer Cook had received a conveyance of Rose Bank from Louis C. Dessaint?

1531 Ans. I do not recollect the exact time; I think it was in the forepart of the fall of 1859.

Int. 332. Who gave you that information?

Ans. I do not recollect.

Int. 333. Had you, prior to the date of this deed from Cook to you, received any information from either Dessaint or Cook that Rose Bank had been conveyed by Dessaint to Cook?

Ans. I do not recollect whether I got the information from Cook, Dessaint, or from general report; I think it was prior to the date of the deed from Cook to me.

Int. 334. Do you recollect whether before or at the time or date of the deed of Ebenezer Cook to you, you had learned what had been done with mortgage known as the "Kettle mortgage" upon Rose Bank?

1532 Ans. I don't recollect.

Int. 335. Had you, prior to the date of the deed from Ebenezer Cook to you, learned for what price or sum Dessaint had bid off Rose Bank at the sale under the trust deed?

Ans. I don't recollect that I had.

Int. 336. Had you, before that time, heard or learned what sum Dessaint paid to Powers for Rose Bank under the trust-deed sale, or otherwise?

Ans. I think I had.

Int. 337. You state, in answer to int. 334, that you do not recollect whether, before or at the time or date of the deed, you had learned what

had been done with the Kettle mortgage. Did you, after the date of that deed, learn what had been done with it?

Ans. I think I understood it had been transfered to Dessaint, and by Dessaint to Cook.

1533 (Answer objected to by def'ts' solicitor as not responsive to the question, and as stating matters of hearsay.)

Int. 338. Which Cook, John P. or Ebenezer?

(Objected to as calling for hearsay.)

Ans. I do not recollect whether I understood it was transfered to Ebenezer Cook or to Cook & Sargent.

Int. 339. About how long after the date of the deed from Ebenezer Cook to you do you recollect of first having heard or learned that the Kettle mortgage had been assigned to Dessaint, & by Dessaint to Ebenezer Cook, or to Cook & Sargent?

Ans. I do not recollect at what time, whether it was at the time of receiving the deed or directly afterwards.

Int. 340. Have you any recollection as to who gave you the information that the Kettle mortgage had been assigned, as stated by you in answer to interrogatory 337?

1534 (Objected as immaterial and calling for hearsay.)

Ans. I do not recollect who I heard it of, unless it was my attorney.

Int. 341. Do you recollect at the time of the date of this deed from Cook to you of making any inquires of Ebenezer Cook in regard to the assignment of the Kettle mortgage by Dessaint?

(Objected to as immaterial.)

Ans. I do not.

Int. 342. Do you recollect of having heard, prior to the date of Cook's deed to you, or at that time, what had been done with the deed of trust under which Powers sold Rose Bank and the note secured thereby?

(Objected to as immaterial, and calling for hearsay.)

Ans. I do not.

Int. 343. Did you make any inquires at the date of said deed to ascertain what had been done with that trust deed and the note secured thereby?

1535 (Objected to as immaterial.)

Ans. I don't recollect that I did.

Int. 344. When you first heard of the purchase of Rose Bank farm by Louis C. Dessaint at the trustee's sale, what sum or amount, if any, did you understand or learn he had bid off Rose Bank for?

(Objected to as calling for hearsay, and because the witness has already stated that he did not learn what sum said farm was bid off for by said Dessaint when he first heard of Dessaint's having purchased the same.

The complainant protests against any instructions to the witness as to the manner he shall answer the questions by refering to and repeating at length the answers made by the [the] witness to previous interrogatories, and especially when no answer has been given covering this interrogatory.)

Ans. I do not recollect.

1536 Int. 345. Do you mean by your last answer that you did at that time learn that he bid off the premises for a certain sum, but that the sum or amount you do not recollect?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I do not recollect what amount I first heard the farm was sold for.

(Answer objected to by complainant as not responsive to the question.

Int. 346. At the time you first heard that Dessaint had purchased Rose Bank, at the trustee's sale, did you hear a sum named as the amount for which he had purchased it?

(Objected to as immaterial, and calling for hearsay.)

Ans. I think I did.

Int. 347. What, according to your present recollection, was that amount?

(Objected to for the same reasons as the last preceeding interrogatory.)

1537 Ans. I do not recollect what amount I heard then.

Int. 348. Did you hear whether it was for as much, or more, or less than the amount due on the deed of trust?

(Objected to for the same reasons as the 346th int.)

Ans. I do not recollect, but think it was the amount of the deed of trust.

Int. 349. Have you at any time, since you first heard the report that Dessaint had purchased the farm at the trustee's sale, in any way learned or been informed what sum he did bid at the sale for Rose Bank?

(Objected to as calling for hearsay.)

Ans. I think I understood since that time that it was about $5,000, but I am not certain.

Int. 350. If you received the information that you say you think you did in your last answer, did you receive it before or after you commenced the suit against May in the district court of Scott County, in January, 1860?

1538 (Objected to as immaterial.)

Ans. I do not recollect exactly. I think it must have been before that time.

Int. 351. Do you think it was before or after the date of the deed from Cook to you?

(Objected to as immaterial.)

Ans. I do not recollect. It may have been before.

Int. 352. You state, in answer to interrogatory 58 put to you upon this examination, that there was a note, or judgment, you don't recollect which, transfered to you by Ebenezer Cook, you think, against Capt. May, for about $3,500. Were you present when such a note or judgment was transfered to you by Ebenezer Cook? and, if so, state whether he signed any instrument transfering the same to you.

Ans. I was not present, and do not know whether he signed such instrument. The business was done through my attorney. I was

1539 not present.

Int. 353. Did the judment or note transferd to you by Ebenezer Cook, as stated by you in your answer to int. 58, have any connection with the Kettle mortgage?

Ans. The business having been done through my attorney, I do not know. My impression is, that it had; but do not know whether it had or not.

Int. 354. Can you now state whether the claim assigned to you, as stated in your answer to int. 58, was, at the time of such assignment, a note or a judgment?

Ans. I think it was a judgment.

Int. 355. Was the assignment you speak of in answer to int. 58 executed on the same day as the deed from Ebenezer Cook to you, or before, or afterwards?

Ans. I do not know, but think it was afterwards.

1540 Int. 356. Do you know, or have you any information, as to the court in which this judgment was recovered?

Ans. I do not recollect, but I think it was in the United States court in Chicago, in the State of Illinois.

Int. 357. Do you not now recollect that the judgment you refer to was one recovered by and in the name of John P. Cook, as plaintiff, and that the assignment of the same was executed by him?

Ans. I do not know what shape it was in, the business having been done by my attorneys.

Int. 358. Did your attorneys make the agreement by which this judgment was transfered without consultation with you?

Ans. I do not recollect, but I think they consulted me & had general instructions.

Int. 359. If they consulted with you, were you not advised

1541 whether this judgment was in favour of John P. Cook or not?

Ans. I do not recollect that I was.

Int. 360. You say in answer to int. 66 that you suppose the judgment & assignment is on file in the Rock Island court; that Judge Drury was directed to see if he could make the judgment off of Capt. May in Rock Island County. Now, do you not recollect that Judge Drury was directed to file the assignment, or cause it to be filed, with the clerk of the court in which the judgment was recovered?

Ans. I do not recollect, but suppose he was.

Int. 361. Are you now able to state whether the assignment of the judgment refered to was signed and executed by Ebenezer Cook, or by John P. Cook?

Ans. I am not.

Int. 362. Has that judgment been assigned by you to any per-

1542 son? and, if so, state to whom.

Ans. I do not recollect of its being assigned to any one.

Int. 363. Can you not state positively whether you have or have not assigned that judgment?

Ans. I have not assigned it.

The further taking of these depositions is here adjourned until tomorrow, March 17th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

THURSDAY, *March 17th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 364. Did you give your personal attention to the transactions connected with the negotiation and assignment of this judgment to you, or was the business intrusted to an attorney?

Ans. The business was intrusted to an attorney; I did not transact it myself.

1543 Int. 365. Was the assignment of the judgment delivered to you or to your attorney?

Ans. I think it was delivered to my attorney.

Int. 366. Who was the attorney?

Ans. Charles E. Putnam was my attorney in making the settlement with Cook & Sargent & Ebenezer Cook.

Int. 367. What do you mean to be understood—that Charles E. Putnam was the attorney to whom the assignment was delivered?

Ans. Having no recollection of receiving the assignment myself, and

as he transacted the business for me in the settlement with Cook & Sargent, he may have received the assignment.

Int. 368. What was done with it (if you know) after he received it?

Ans. I think I understood that the assignment was on record in the United States court at Chicago.

1544 Int. 369. Did you give Putnam, as your attorney, any directions or instructions what to do with it?

Ans. Not knowing much about law matters, I generally leave it to my attorney to do whatever is necessary and proper, and I don't recollect of giving Mr. Putnam any directions about the assignment.

(All this answer before & including the word "proper," in the 4th line, objected to by complainant's solicitor as not responsive to the question.)

Int. 370. Do you recollect in answer to interrogatory 61 & 62 on this examination of stating that the assignment of this judgment was turned over to your attorney, Judge Drury?

Ans. I do; and I thought so for the reasons that he was employed to see if he could make anything on the judgment in Rock Island County.

(All this answer except the words "I do," in the first line, objected to by comp'ts' solicitor as not responsive to the question.)

1545 Int. 371. Did Judge Drury, as your attorney, assist Putnam in effecting this negotiation and assignment of this judgment to you?

Ans. I think not. I don't remember that he did.

Int. 372. Were you present when the deed was executed from Ebenezer Cook to you?

Ans. I was not.

Int. 373. Was that on its execution delivered to you or Charles E. Putnam?

Ans. It was not delivered to me; I think it was delivered to Charles E. Putnam.

Int. 374. Who left the same at the recorder's office for record, if you know?

Ans. I do not recollect who left it at the recorder's office.

Int. 375. Have you any recollections of leaving it there for record?

1546 Ans. I have not.

Int. 376. Do you now recollect whether you were or were not at the banking-house of Cook & Sargent on the 16th of December, 1859.

Ans. I was there on the morning of the 16th.

Int. 377. At the time of the failure of Cook & Sargent had Ebenezer Cook a large amount of individual property, real and personal.

(Objected to as immaterial.)

Ans. I do not know what he had.

Int. 378. Do you know of his having and owning, individually, any real estate beside that described in the deed to you on that date?

(Objected to as immaterial and because there is better evidence of such title, if any, than the parole testimony of the witness.)

Ans. I think he owned a house & a lot & ½ or two lots on the corner of Rock Island & 4th streets; & I think he had a lot on Main
1547 street, between 4th & 5th streets. He may have had others; I don't recollect.

Int. 379. Do you recollect whether or not any real estate owned by Ebenezer Cook, individually, was included & embraced in the assignment which you have spoken of as having been made by Cook & Sargent and the individual members of that firm?

(Objected to as immaterial, and because the deed of assignment is the best evidence.)

Ans. I am unable to state from recollection; but think his interest in the property on 4th & Rock Island streets was included in that assignment

Int. 380. Did Ebenezer Cook, to your knowledge or information, execute to any other person or persons, deeds of real property belonging to him individually, at or about the time of the execution of the deed to you on the 16th of December, 1859?

(Objected to as immaterial.)

1548 Ans. I do not know whether he did or did not.

Int. 381. Have you any information as to whether he did or did not?

Ans. I have not.

Int. 382. Where the lands & lots which you have described in your examination as having been conveyed to you by the firm of Cook & Sargent conveyed to you at the time, or before or after the date, of the deed from Ebenezer Cook to you?

(Objected to as immaterial, and because the deeds are the best evidence.)

Ans. They were deeded to me afterwards.

Int. 383. About how long afterwards.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I think they were deeded to me in the same month; some of them two or three weeks afterwards, & some of them later than

1549 that. I do not remember the dates?

Int. 384. Did John P. Cook, at or about the date of the deed from Ebenezer Cook to you, execute to you a conveyance or conveyances of any real estate owned by him individually?

(Objected to as immaterial.)

Ans. He did not.

Int. 385. Did he assign or transfer to you, at or about that date, any personal securities of any description other than the judgment mentioned by you as having been recovered by him in the United States court in Illinois?

(Objected to as immaterial, and as assuming that the witness has stated what he has not stated.)

Ans. He did not.

Int. 386. At the time of the execution of this deed by Ebenezer Cook, did the firm of Cook & Sargent owe you anything on your deposit account?

Ans. It did not.

1550 Int. 387. Had you at any time overdrawn your account, so that you were indebted to them on that account for something over $900?

(Objected to as immaterial.)

Ans. I had overdrawn my account about to that amount.

Int. 388. Were the conveyances executed to you by the firm of Cook & Sargent, as stated by you on this examination, executed solely for the purpose of securing or indemnifying you for liabilites as accomodation endorser for the firm of Cook & Sargent?

(Objected to as immaterial and as improper in form, the proper form of the question (if proper at all) being, "For what purpose were the said conveyances executed?"

Ans. They were.

Int. 389. Were the note & judgment against Barrows & Prettymen, mentioned by you, also assigned for that same purpose?

(Objected to for the same reason as the last preceeding in-
5551 terrogatory.)

Ans. They were.

Int. 390. What, as near as you now recollect, was the aggregate amount of the consideration stated in these conveyances by Cook & Sargent to you?

(Objected to as immaterial, and because the deeds themselves are the best evidence.)

Ans. I do not recollect the aggregate amount stated in the conveyances.

Int. 391. Have you now those conveyances in your possession?

(Objected to as immaterial, the said conveyances having nothing to do with the subject-matter of this suit.)

Ans. I think I have.

Int. 392. Will you make an examination of those conveyances, and then give or state the aggregate amount of the consideration named in all of the said conveyances?

(Objected to because it is immaterial, and because the con-
1552 veyances themselves are the best evidence.)

Ans. I wish to consult my council before answering.

(After having consulted his council during an adjournment of 2 hours, the witness answers as follows:)

The amount in the aggregate is about $44,000.

Int. 393. Do you recollect whether you are named among the creditors, a list of which you say was appended to the assignment of Cook & Sargent to yourself and John W. Drury?

(Objected to as immaterial and because the said list is the best evidence.)

Ans. I do not.

Int. 394. At the time of these conveyances of real estate by Cook & Sargent to you, was there any liability or indebtedness on their part to you except that arrising out of your endorsments for them?

(Objected to as immaterial.)

1553 Ans. Their liabilities to me were for endorsments, acceptances, and accomodation paper which I had signed for them and for their use.

Int. 395. State upon how many instruments you were liable for them, Cook & Sargent, at the time of these conveyances to you by them?

(Objected to as immaterial.)

Ans. If I remember correctly, I think about four.

Int. 396. Were you liable upon any of these as maker of the papers, or only as endorser or acceptor.

(Objected to as immaterial.)

Ans. I think I was endorser and acceptor.

Int. 397. Upon how many acceptances were you liable for them at that time?

Ans. I am not able to state without looking at the papers, how many were acceptances, or whether they were all endorsments.

1554 Int. 398. Were either of these four instruments upon which you state you were liable for Cook & Sargent, due at the time they executed these conveyances to you?

(Objected to as immaterial.)

Ans. There was two of these conveyances made to me before they were due, and one after they were due.

Int. 399. State who held these instruments at the date of those conveyances by Cook & Sargent to you.

(Objected to as immaterial.)

Ans. There was two or three at the Merchants' Bank at Boston, one at the Washington Bank at Boston, and the other one at the Freeman's Bank at Boston.

Int. 400. Which of these were due at the time of the execution of the first conveyance by Cook & Sargent to you?

(Objected to as immaterial. Question waived.)

Int. 401. State the respective amounts of the two instruments
1555 which you say were at the Merchants' Bank in Boston at the time of these conveyances.

(Objected to as immaterial.)

Ans. I believe one was for $5,000, and one for $4,500.

Int. 402. Do you now recollect whether upon those two at the Merchants' Bank, you were liable as acceptor or as endorser?

(Objected to as immaterial, and because the instruments are the best evidence.)

Ans. I do not remember which.

Int. 403. State about what time these two instruments at the Merchants' Bank matured.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I think one of them became due somewhere about the 3d or 4th of January, 1860, and the other about the 3d or 4th of February, 1860.

1556 Int. 404. What was the amount of the instrument refered to by you, as being at the Washington Bank at the date of the conveyances from Cook & Sargent to you?

(Objected to for the same reasons as the 402d interrogatory.)

Ans. The amount was $5,000.

Int. 405. What was the amount of the paper or instrument at the Freeman's Bank, as stated by you?

(Objected to for the same reasons as the 402d int.)

Ans. It was $5,666 and some cents, I think.

Int. 406. Can you say from your own knowledge that either or any of these instruments had been negotiated by Cook & Sargent at the time they executed to you the first conveyance which they executed?

(Objected to as immaterial.)

Ans. I do not know of my own knowledge, only from information.
1557 (All of this answer after the word "knowledge" objected to by complainant as not responsive to the question.)

Int. 407. Was there any other person liable upon these instruments, or any of them, with you as joint endorser or acceptor?

(Objected to for the same reasons as the 402d int.)

Ans. I think not.

Int. 408. Was there any person liable upon any or either of them as prior endorser?

Ans. I think not.

Int. 409. Can you state whether either of these four instruments were endorsed by any other person than yourself?

(Objected to for the same reasons as the 402d int.)

Ans. I think they were endorsed by Cook & Sargent and Sargent & Dixwell.

Int. 410. Who was the maker or drawer of the paper endorsed by Cook & Sargent and Sargent & Dixwell?

1558 (Objected to for the same reasons as the 402d int.)

Ans. I think William Inslee was the maker or drawer of one

piece of paper, and I don't recollect whether the other was made by Cook & Sargent or myself; I think they were made by Cook & Sargent.

Int. 411. What is your recollection as to whether the instrument executed by William Inslee was a note or a draft?

(Objected to for the same reasons as the 402d interrogatory.)

Ans. I think it was in the shape of a draft.

Int. 412. Upon whom?

(Objected to for the same reasons as the 402d int.)

Ans. I do not recollect whether it was drawn on Cook & Sargent and endorsed by me, or drawer on me and endorsed by Cook & Sargent.

1559 Int. 413. What was the amount of the note or paper to which you say Wm. Inslee was a party?

(Objected to for the same reasons as the 402d interrogatory.)

Ans. It was $4,500.

Int. 414. Where did Wm. Inslee reside at that time?

Ans. He resideded at Davenport.

Int. 415. Where did the firm of Sargent & Dixwell do business?

Ans. At Boston.

Int. 416. Was the Sargent that you speak of as being a member of the firm of Sargent & Dixwell the same Sargent who was a member of the firm of Cook & Sargent?

Ans. He was the same Sargent as of the firm of Cook & Sargent.

Int. 417. Do you not recollect that on some of these instru-

1560 ments the liability of the firm of Sargent & Dixwell by their endorsment or acceptance was prior or precedent to yours?

(Objected to for the same reasons as the 402d int; and also requiring the witness to state the legal effect of the instrument.)

Ans. I think not.

Int. 418. State when the paper that you refer to as being at the Washington Bank and the Freeman's Bank matured.

(Objected to for the same reasons as the 402d int.)

Ans. I think one of them matured in January and one in February, 1860; which one of them I cannot state.

Int. 419. State the aggregate amount of the notes which you say in answer to int. 54 Cook & Sargent transfered to you against Burrows & Prettyman.

(Objected to for the same reasons as int. 402.)

1561 Ans. I prefer answering that question to-morrow, as I would like the advise of my council.

Int. 420. State upon how many instruments you were endorser or acceptor for Ebenezer Cook, which were then unpaid, on the 16th of December, 1859.

Ans. I think there were two.

Int. 421. In what character were you a party to those instruments as maker, endorser, or otherwise?

(Objected to for the same reasons as the 402d int.)

Ans. I think I was endorser.

Int. 422. State whether the instruments were notes or drafts.

(Objected to for the same reasons as the 402d int.)

Ans. I think they were notes.

Int. 423. Who was the maker or makers?

Ans. I think Ebenezer Cook was the maker.

1562 Int. 424. To whom were they payable?

(Objected to for the same reasons as the 402d int.)

Ans. I think they were payable to Antoine Le Claire and George L. Davenport.

Int. 425. Were they endorsed by both the payees, yourself, & Antoine Le Claire?

(Objected to for the same reasons as the 402d int.)

Ans. I think they were.

Int. 426. What were the amounts, respectively, of the two notes refered to as having been endorsed by yourself and Antoine Le Claire for Ebenezer Cook?

(Objected to for the same reasons as the 402d int.)

Ans. $5,000 each.

Int. 427. Had they, or either of them, matured on the 16th of December, 1859?

(Objected to for the same reasons as the 402d int.)

Ans. They had not.

1563 Int. 428. Can you state from your own knowledge that those notes, or either of them, had been negotiated or transfered by Ebenezer Cook on the 16th of December, 1859?

(Objected to as immaterial.)

Ans. I cannot.

Int. 429. Do you not recollect that one of those notes was made payable to the order of Antoine Le Claire individually, and endorsed by him, and then by yourself as second endorser?

(Objected to for the same reasons as the 402d int.)

Ans. I do not.

Int. 430. Are you able to state positively whether or not one of those notes was endorsed by Antoine Le Claire as first and yourself as second endorser?

(Objected to for the same reasons as the 402d int.)

Ans. I have no such recollection.

(Answer objected to by complainant as not responsive to the question.)

1564 Int. 431. Are you able now to state positively that one of those notes was not endorsed by Antoine Le Claire as first and yourself as second endorser?

(Objected to for the same reasons as the 402d int.)

Ans. I don't think it was.

(Objected to by complainant as not responsive to the question.)

Int. 432. Was there on the 16th day of December, 1859, any indebtedness from you to Ebenezer Cook, or from Ebenezer Cook to you?

(Objected to as immaterial.)

Ans. There was none from me to Ebenezer Cook, and his only liability to me was the non-payment of those notes which I had endorsed for him.

Int. 433. Was there any indebtedness from you to the firm of Cook & Sargent at that date except the overdraft of your account that you have before spoken of?

(Objected to as immaterial.)

Ans. There was not.

1565 Int. 434. When did the two notes which you speak of as having been endorsed by yourself and Antoine Le Claire for Ebenezer Cook mature?

(Objected to for the same reasons as the 402d int.)

Ans. I am uncertain as to the time, but think it was some time in January & February, 1860.

Int. 435. Was this amount, of about $900, which you speak of as an overdraft of your account upon the firm of Cook & Sargent, ever paid by you to the firm?

(Objected to as immaterial.)

Ans. I think that was deducted from the liabilities which I assumed for them.

Int. 436. Do you recollect whether that was so or not?

(Objected to as immaterial.)

Ans. I think it was.

The further taking of these depositions is here adjourned until to-morrow, March 18th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1566 FRIDAY, *March 18th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 437. Was the arrangement or agreement by which the judgment against May of about $3,500, spoken of by you, should be transfered or assigned to you, and Rose Bank farm conveyed to you by Ebenezer Cook, one and the same agreement & transaction, or seperate and distinct?

Ans. I do not recollect of any particular agreement; only a promise from Mr. Ebenezer Cook that I should be fully secured and saved from any loss. The arrangments for taking the different prices of property was made through my attorney, so that I do not know whether there was an agreement to take that judgement at the same time Rose Bank farm was taken.

Int. 438. Was this promise of Cook you speak of in your last answer made on the day the deed was executed or before?

1567 Ans. I think it was made on the morning of the day of their failure.

Int. 439. State whether your attorney, Mr. Putnam, was present at that time or not.

Ans. I do not recollect whether he was present at that time or not.

Int. 440. Was Mr. Putnam at that time also attorney for Antoine Le Claire?

(Objected to as immaterial.)

Ans. I think he was.

Int. 421. Was he the attorney acting for Le Claire, and who made the arrangment for securing or indemnifying Le Claire for his liabilities for Cook & Sargent?

(Objected to as immaterial.)

Ans. He was one of the attorneys of Mr. Le Claire that made settlement with Cook & Sargent.

Int. 442. Do you know whether Antoine Le Claire had any personal knowledge of what arrangment was made to relieve him from, or secure him against, these notes which were endorsed jointly by you and him?

Ans. I do not.

1568 Int. 443. Had you any personal knowledge of the manner in which you were to be secured or indemnifyed for you liability for Ebenezer Cook, as endorser on the two notes with Antoine Le Claire, until the arrangment had been completed and finished by your attorney?

Ans. I do not recollect whether I was informed before the completion of the papers or not.

Int. 444. Is it your understanding that this deed was executed, and the judgment against Capt. May assigned to you, for the purpose of saving you harmless against liabilities on these two notes, endorsed by

you & Le Claire, as promised by Ebenezer Cook on the morning of the day the deed was executed?

(Objected to as not calling for any fact or any agreement known to the witness, but only for his understanding. And also as improper in form; the proper form being, "For what purpose is it your understanding the said deed was made and the said judgment assigned?")

Ans. My understanding now is that the deed was executed, &
1569 the assignment made to pay debts for which I was liable.

Int. 445. Do you mean by your last answer, in using or speaking of the word "debts," liabilities for Ebenezer Cook alone, or Ebenezer Cook & also the firm of Cook & Sargent?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I think it was for the liabilities of Ebenezer Cook, but I am not certain.

Int. 446. Were there any other liabilities on your part for Ebenezer Cook that you now recollect of, except that created by & arrising from your endorsment of the two notes which you say were endorsed by you & Antoine Le Claire?

Ans. No other that I now recollect of.

Int. 447. Have you since the conveyance of Rose Bank farm to you by Ebenezer Cook conveyed the same to any person? If so, state when the same was conveyed, and to whom.

1570 Ans. I conveyed the Rose Bank farm to Joseph A. Le Claire, junior; I do not recollect the date just now.

Int. 448. Was it about the month of January, 1862, that you conveyed Rose Bank to Joseph A. Le Claire, jr.?

Ans. I think it was.

Int. 449. Please examin complainant's Exhibit "P," and state, if you can, the time of such conveyance.

Ans. On examination of said exhibit I find the conveyance was made on the 20th day of January, 1862.

Int. 450. About how old was the grantee named in that deed, Joseph A. Le Claire, jr., at the time of that conveyance?

Ans. I do not know how old he was.

Int. 451. State whether he was more or less than ten years of age at that time.

Ans. I think he was less than ten years of age.

1571 Int. 452. What relation (if any) was he, the grantee named in the deed, to Antoine Le Claire?

Ans. He was the son of Antoine Le Claire's nephew.

Int. 453. Was Joseph A. Le Claire, the father of Joseph A. Le Claire, junior, the son to whom you made the conveyance, a devisee named in the will of Antoine Le Claire, deceased?

(Objected to as immaterial, and because the will is the best evidence.)

Ans. I do not recollect.

Int. 454. Was there any consideration paid to you by the grantee named in that deed for the conveyance of the premises?

Ans. The consideration was paid by Joseph A. Le Claire, the father of Joseph A. Le Claire, junior.

(Answer objected to by complainant as not responsive.)

Objected to by defendents' solicitor as not responsive.)

1572 Int. 455. Was there anything paid as the consideration for that conveyance by the grantee named in the deed, Joseph A. Le Claire, junior?

Ans. There was nothing paid by himself.

Int. 456. Was there any money paid to you directly as the consideration for the conveyance of these premises to Joseph A. Le Claire, jr., by any person?

Ans. There was.

Int. 457. Was it by Joseph A. Le Claire?

Ans. It was.

Int. 458. State when and where he paid you the money, and how much.

Ans. He paid me about $2,300 in money. I do not recollect at what place he paid it, whether it was at my office or the law-office of Putnam & Rogers. I don't recollect the date exactly; I think about the 21st or 22nd of January, 1862.

Int. 459. Who was present at the time?

1573 Ans. I do not recollect who was present, unless it was in the presenc of Charles E. Putnam.

Int. 460. Was the money which he paid you at that time money which he had taken from the possession of Antoine Le Claire at or about the time of his death, and which he had up to that time held?

Ans. I prefer to answer that question after dinner, as I wish the advise of my council before answering.

Adjourned until 2 o'clock p. m.

2 O'CLOCK P. M.

Examination resumed pursuant to adjournment.

The witness answers interrogatory 460 as follows:

It was.

Int. 461. Had he, J. A. Le Claire, at the same time, a large amount of notes or other securities belonging to the estate of Antoine Le Claire, which he had taken possession of and withheld from the execu-

1574 tors of Antoine Le Claire?

Ans. He had.

Int. 462. Were those securieties delivered to the executors of Antoine Le Claire by Joseph A. Le Claire? and, if so, state when.

Ans. They were not.

Int. 463. Did the executors of the estate of Antoine Le Claire have a settlement with Joseph A. Le Claire in regard to certain claims made by him against the estate of Antoine Le Claire, some time in April, 1862?

Ans. I think they had.

Int. 464. Do you recollect that in March, 1862, a claim was filed against the estate of Antoine Le Claire by Joseph A. Le Claire, with the county judge of Scott County?

Ans. I think there was, about that time.

Int. 465. Was the claim which he made against the estate at that time resisted by the executors or not?

1575 (Objected to on the ground that the record in the county court is the best evidence.)

Ans. I am not able to say whether it was resisted or not. It was attended to before the county court by the council for the estate.

Int. 466. Did Joseph A. Le Claire or his attorney, upon the hearing of this claim before the county judge, produce an instrument in writing executed by himself and Antoine Le Claire, a portion of which related to the Rose Bank farm?

Ans. I was not present at that examination, and do not know what he did produce before the county court.

Int. 467. Have you any knowledge of such an agreement as that refered to in the last question?

Ans. I have.

Int. 468. Is that agreement now in possession of the executors of the estate of Antoine Le Claire?

1576 Ans. That agreement is in the hands of the attorneys of the estate of Antoine Le Claire.

Int. 469. In the settlement which you speak of as having been made between Joseph A. Le Claire and the executors of Antoine Le Claire in April, 1862, were the claims of Joseph A. Le Claire under the written agreement refered to between him & Antoine Le Claire, settled or not?

Ans. That was the last settlement of the claims of Joseph A. Le Claire; some of the claims under that agreement were settled, and some were not, at that time, I think.

Int. 470. Were the claims made by Joseph A. Le Claire under that instrument which were not settled between him and the executors in April, 1862, settled between him and the executors at any other time? and, if so, state when.

Ans. I think there was a settlement of a part of the agreement made in January, 1862.

1577 Int. 471. State the amount in the aggregate, as near as you are able, of the notes & securities which Joseph A. Le Claire had taken and which he withheld from the executors, as stated by you in answer to interrogatory 461 on this examination.

Ans. He held in his hands securities amounting to some $8,700.

Int. 472. Were those securities surrendered up by him on the settlement with the executors which you speak of as having been made in April, 1862, or before that time or after?

Ans. They were surrendered up by him before that time.

Int. 473. Were these notes and secureties which you speak of as having been taken & withheld by Joseph A. Le Claire personal or real securities, or both?

Ans. He held notes, most all of which were secured by real estate.

Int. 474. Did these notes and mortgages at the time they were
1578 so withheld by Joseph A. Le Claire, as you understood, belong to the estate of Antoine Le Claire?

Ans. They did.

Int. 475. Was the conveyance of Rose Bank by you to Joseph A. Le Claire, jr., before or after you had qualified as executors of the estate of Antoine Le Claire?

Ans. It was after I qualified.

Int. 476. What portion of the claim of Jos. A. Le Claire mentioned in that agreement between him & Antoine Le Claire refered to by you had been settled prior to the settlement made with him in April, 1862?

Ans. That portion of the agreement which related to the May farm.

Int. 477. Was his claim under that part of the agreement relating to Rose Bank farm presented by him to the executors as a part of his claim against the estate of Antoine Le Claire?

Ans. It was.

1579 Int. 478. When was his claim under that part of the agreement refering to Rose Bank presented to the executors?

Ans. I think some time in the early part of January, 1862.

Int. 479. Did Joseph A. Le Claire at the time he paid over to you this $2,300, which you state, in answer to int. 458 & 459, he had taken and withheld from the estate of Antoine Le Claire, deliver to you any

1580 of these notes or secureties, (see sheet No. 86,) also taken by him and belonging to the estate of Antoine Le Claire?

Ans. He did.

Int. 480. What was the aggregate amount of the notes and securities delivered by him to you at that time?

Ans. About $8,760.

Int. 481. Did those notes & securities constitute the balance of the consideration over & above the sum paid by Joseph A. Le Claire to you in money, as stated, for the conveyance of Rose Bank, executed by you to Joseph A. Le Claire, junior?

Ans. I am not willing to answer that question in its present shape at present, for the reasons that there was an agreement between the estate and myself individually that if I deeded the Rose Bank farm in persuance of that agreement between Joseph A. Le Claire & Mr. Antoine Le Claire, that the estate should pay the notes that I was bound for,

1581 and that I should hold those securities & money which were turned over by Joseph A. Le Claire to me in my hands until those notes were taken up.

(The complainant objects to, and protests against, the reasons above set forth for not answering the interrogatory, and insists that they are in nowise responsive.)

The further taking of these depositions is here adjourned until Monday, March 21st, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MONDAY, *March 21st*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 482. You say in answer to interrogatory 454, that the consideration for the conveyance of Rose Bank by you to Joseph A. Le Claire, junior, was paid by Joseph A. Le Claire, the father of Joseph A. Le Claire, jr.; and in answer to interrogatories 456, 457, & 458, you further say that he, Joseph A. Le Claire, paid you a part of such consideration, to wit, $2,300 in money; now, was the balance of the consideration for the conveyance of Rose Bank to Joseph A. Le Claire, jr., paid by

1582 Joseph A. Le Claire by delivering to you the notes & securities belonging to the estate of Antoine Le Claire, and which he had taken and withheld, and which, in answer to interrogatory 480, you say amounted to about $8,760?

Ans. I am unable to state what was the real consideration, unless I am allowed to state the whole transaction.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 483. Interrogatory 482 repeated?

(Repetition of the question objected to by def'ts' solicitor because it has already been answered.)

Ans. Those moneys, notes, & securities were turned over to me, but I do not know whether they were the legal consideration until all the facts connected with the transaction are stated for the court to judge.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 484. Do you decline to give a direct and explicit answer to

1583 interrogatory 482, and repeated by interrogatory 483?

Ans. I cannot answer unless I am allowed to state all the facts connected with the transaction.

(Answer objected to as not responsive to the question.)

Int. 467. Have you any knowledge of such an agreement as that refered to in the last question?

Ans. I have.

Int. 468. Is that agreement now in possession of the executors of the estate of Antoine Le Claire?

1576 Ans. That agreement is in the hands of the attorneys of the estate of Antoine Le Claire.

Int. 469. In the settlement which you speak of as having been made between Joseph A. Le Claire and the executors of Antoine Le Claire in April, 1862, were the claims of Joseph A. Le Claire under the written agreement refered to between him & Antoine Le Claire, settled or not?

Ans. That was the last settlement of the claims of Joseph A. Le Claire; some of the claims under that agreement were settled, and some were not, at that time, I think.

Int. 470. Were the claims made by Joseph A. Le Claire under that instrument which were not settled between him and the executors in April, 1862, settled between him and the executors at any other time? and, if so, state when.

Ans. I think there was a settlement of a part of the agreement made in January, 1862.

1577 Int. 471. State the amount in the aggregate, as near as you are able, of the notes & securities which Joseph A. Le Claire had taken and which he withheld from the executors, as stated by you in answer to interrogatory 461 on this examination.

Ans. He held in his hands securities amounting to some $8,700.

Int. 472. Were those securities surrendered up by him on the settlement with the executors which you speak of as having been made in April, 1862, or before that time or after?

Ans. They were surrendered up by him before that time.

Int. 473. Were these notes and secureties which you speak of as having been taken & withheld by Joseph A. Le Claire personal or real securities, or both?

Ans. He held notes, most all of which were secured by real estate.

Int. 474. Did these notes and mortgages at the time they were
1578 so withheld by Joseph A. Le Claire, as you understood, belong to the estate of Antoine Le Claire?

Ans. They did.

Int. 475. Was the conveyance of Rose Bank by you to Joseph A. Le Claire, jr., before or after you had qualified as executors of the estate of Antoine Le Claire?

Ans. It was after I qualified.

Int. 476. What portion of the claim of Jos. A. Le Claire mentioned in that agreement between him & Antoine Le Claire refered to by you had been settled prior to the settlement made with him in April, 1862?

Ans. That portion of the agreement which related to the May farm.

Int. 477. Was his claim under that part of the agreement relating to Rose Bank farm presented by him to the executors as a part of his claim against the estate of Antoine Le Claire?

Ans. It was.

1579 Int. 478. When was his claim under that part of the agreement refering to Rose Bank presented to the executors?

Ans. I think some time in the early part of January, 1862.

Int. 479. Did Joseph A. Le Claire at the time he paid over to you this $2,300, which you state, in answer to int. 458 & 459, he had taken and withheld from the estate of Antoine Le Claire, deliver to you any

1580 of these notes or secureties, (see sheet No. 86,) also taken by him and belonging to the estate of Antoine Le Claire?

Ans. He did.

Int. 480. What was the aggregate amount of the notes and securities delivered by him to you at that time?

Ans. About $8,760.

Int. 481. Did those notes & securities constitute the balance of the consideration over & above the sum paid by Joseph A. Le Claire to you in money, as stated, for the conveyance of Rose Bank, executed by you to Joseph A. Le Claire, junior?

Ans. I am not willing to answer that question in its present shape at present, for the reasons that there was an agreement between the estate and myself individually that if I deeded the Rose Bank farm in persuance of that agreement between Joseph A. Le Claire & Mr. Antoine Le Claire, that the estate should pay the notes that I was bound for,
1581 and that I should hold those securities & money which were turned over by Joseph A. Le Claire to me in my hands until those notes were taken up.

(The complainant objects to, and protests against, the reasons above set forth for not answering the interrogatory, and insists that they are in nowise responsive.)

The further taking of these depositions is here adjourned until Monday, March 21st, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MONDAY, *March 21st*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 482. You say in answer to interrogatory 454, that the consideration for the conveyance of Rose Bank by you to Joseph A. Le Claire, junior, was paid by Joseph A. Le Claire, the father of Joseph A. Le Claire, jr.; and in answer to interrogatories 456, 457, & 458, you further say that he, Joseph A. Le Claire, paid you a part of such consideration, to wit, $2,300 in money; now, was the balance of the consideration for the conveyance of Rose Bank to Joseph A. Le Claire, jr., paid by
1582 Joseph A. Le Claire by delivering to you the notes & securities belonging to the estate of Antoine Le Claire, and which he had taken and withheld, and which, in answer to interrogatory 480, you say amounted to about $8,760?

Ans. I am unable to state what was the real consideration, unless I am allowed to state the whole transaction.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 483. Interrogatory 482 repeated?

(Repetition of the question objected to by def'ts' solicitor because it has already been answered.)

Ans. Those moneys, notes, & securities were turned over to me, but I do not know whether they were the legal consideration until all the facts connected with the transaction are stated for the court to judge.

(Answer objected to by complainant's solicitor as not responsive to the question.)

Int. 484. Do you decline to give a direct and explicit answer to
1583 interrogatory 482, and repeated by interrogatory 483?

Ans. I cannot answer unless I am allowed to state all the facts connected with the transaction.

(Answer objected to as not responsive to the question.)

Int. 485. Interrogatory 484 repeated.

(Objected to because the question has already been put and answered, as well as the previous questions refered to in it, and because it is an attempt, on the part of the council, to compel the witness to answer in a particular form or way, which he is not entitled to do.)

Ans. I am unwilling to make any further answer unless I am allowed to state the whole transaction.

Int. 486. Did Joseph A. Le Claire promise or agree with you to pay over the $2,300 in money, and deliver to you the notes & securities amounting, as you state in answer to int. 480, to about the sum
1584 of $8,760, if you would execute a deed of Rose Bank to his son Joseph A. Le Claire, junior?

Ans. He did.

Int. 487. Was there any other consideration on the part of Joseph A. Le Claire for the execution by you of the deed for Rose Bank to Joseph A. Le Claire, junior, except the payment to you of the $2,300, and the delivery to you of the notes & securities belonging to the estate of Antoine Le Claire, which he had taken & withheld, as stated by you in your answers to previous interrogatorys?

Ans. There was a further consideration, which was the settlement of a claim of Joseph A. Le Claire against the estate of Antoine Le Claire, under a written agreement with Mr. A. Le Claire.

Int. 488. Was the claim of Joseph A. Le Claire against the estate of Antoine Le Claire, refered to in your last answer, the claim under the written agreement between him and Antoine Le Claire in rela-
1585 tion to Rose Bank, heretofore mentioned by you as being in the hands of your solicitors or attorneys?

Ans. It was.

Int. 489. Was the reason urged and insisted upon by Joseph A. Le Claire for taking and withholding this money and the notes & securities belonging to the estate of Antoine Le Claire, which you have mentioned, that Antoine Le Claire had agreed to convey Rose Bank to him, and that he had taken those securities and designed to hold them until he had got a conveyance of this farm?

(Objected to as immaterial, calling for the declarations of J. A. Le Claire, which are not competent against these defendents, and improper in form.)

Ans. I don't remember that it was.

Int. 490. Did he, to your knowledge, make any such claim as that indicated by the last interrogatory?

(Objected to for the same reasons as the last interrogatory, and
1586 as vague & indefinate, not specifying sufficiently the nature of the claim intended.)

Ans. I do not recollect that he stated that he held them for any particular claim; but my impression is, that he held them for the purpose of securing him for various claims.

Int. 491. As between yourself & Joseph A. Le Claire, was the agreement that if he would surrender & give up his claim, under the written agreement between him & Antoine Le Claire in relation to Rose Bank, and deliver up & surrender the $2,300 in money, and the notes and securities which he had taken and withheld from the estate of Antoine Le Claire, as stated by you, that you would deliver to him a conveyance of the said Rose Bank farm?

Ans. The way I understand it, I should say I had no agreement individually with Joseph A. Le Claire.

Int. 492. Did you have any agreement with him of that kind as executor of the estate of Antoine Le Claire?

1587 Ans. There was an agreement of that kind between executors and Joseph A. Le Claire.

Int. 493. Was this agreement that you mentioned in your last answer as existing between Joseph A. Le Claire & the executors of Antoine Le Claire made at the time of the execution and delivery of the deed to Rose Bank by yourself & wife to Joseph A. Le Claire, junior, or before?

Ans. The agreement was made through the attorney of the estate, I think probably a few days before the deed was executed.

(The words "through the attorneys of the estate" objected to by complainant's solicitor as not responsive to the question.)

Int. 494. Were the $2,300 and the notes & securities, which you speak of as having been taken & withheld by Jos. A. Le Claire from the estate, delivered and surrendered up to the executors at the time of the execution of the deed by yourself & wife to Joseph A. Le Claire, jr., or were they delivered and surrendered before or afterwards?

1588 Ans. I think they were surrendered up to me on the delivery of the deed.

Int. 495. Was John P. Cook indebed to you on any individual accounts or transactions on the 16th of December, 1859?

Ans. He was not.

Int. 496. Did any of the members of the firm of Cook & Sargent, except Ebenezer Cook, execute to you any conveyance or conveyances of individual property on or about the 16th day of December, 1859.

(Objected to as immaterial.)

Ans. They did not.

Int. 497. Were there any conveyances executed to you by the firm of Cook & Sargent, or by the individual members of the firm, or any of them, in the month of December, 1859, or January, 1860, for any other purpose than to save you harmless, and indemnify you against loss and liability upon the four instruments upon which, as you state, you were liable for the firm of Cook & Sargent, and the two notes endorsed

1589 by you & Antoine Le Claire for Ebenezer Cook, as stated by you on this examination?

(Objected to as immaterial.)

Ans. I did not.

Int. 498. At the time of these conveyances by the firm of Cook & Sargent to you, mentioned & refered to you in your answers to previous interrogatories, did you agree with Cook & Sargent to assume the payment of the four several instruments upon which you were liable for them, as stated by you on this examination, or did you simply receive these conveyances by way of security or indemnity in case you should subsequently be compelled to pay the said instruments?

(Objected to as immaterial.)

Ans. I agreed to assume the payment of these notes.

Int. 499. Were these notes or instruments, or any of them, unpaid at the time of the assignment to you & J. W. Drury, on the 23d day of January, 1861?

1590 (Objected to as immaterial.)

Ans. I believe all those notes were taken up by me previous to that time.

Int. 500. Was there more than one instrument for the amount of $4,500, upon which you were liable for the firm of Cook & Sargent, which fell due in January or February, 1860?

(Objected to as immaterial.)

Ans. I don't know of any more than one.

Int. 501. Is that the note of $4,500 which you refer to in your answer to interrogatory 401 on this examination?

(Objected to as inmaterial.)

Before answering, the witness requests that interrogatory 401 & the answer thereto be read to him, which was done, & the witness then answers as follows:

Ans. It is.

Int. 502. Do you not recollect that in the schedule of liabilities annexed to the general assignment executed to you & J. W. Drury,
1591 for the benefit of creditors, on the 23d day of January, 1861, that Cook & Sargent included & specified as a liability due from them this note of $4,500?

(Objected to as immaterial, and because the said schedule refered to in the interrogatory is the best evidence.)

Ans. I have no such recollection.

Int. 503. Have you now in your possession as assignee the original schedule of liabilities prepared and verified by the members of the firm of Cook & Sargent, and annexed to the assignment delivered to you & J. W. Drury?

Ans. I do not know, but I believe there is such a schedule at my office.

Int. 504. Will you please refresh your recollection by an inspection or examination of that schedule, and then state whether or not that note of $4,500 is specified and included in that schedule as one of their liabilities to you?

(Objected to for the same reasons as the 502d interrogatory.)

1592 Ans. I will do so.

Int. 505. Do you not recollect that on or about the 17th day of December, 1859, John P. Cook executed to you a conveyance of individual real estate, lying & situate in the county of Scott, for the consideration named in the deed of $9,000?

(Objected to as immaterial, and because the deed is the best evidence.)

Ans. That is one of the conveyances I spoke of in a former answer, of property belonging to the firm of Cook & Sargent, and conveyed by the individual members; that deed was made to me by John P. Cook of property belonging to the firm.

Int. 506. Were any of the other conveyances that you speak of as having been executed to you by the firm of Cook & Sargent, in answer to the 42d & 43d int., executed by one only of the firm?

(Objected to as immaterial, and because the deeds are the best evidence.)

1593 At the request of the witness, the said 42nd and 43d interrogatories, and the answers thereto were read to him, & he then answered as follows, to wit:

Ans. There was one other conveyance made by John P. Cook, dated December 29th, 1859.

Int. 507. Is the consideration of $9,000, stated in this deed, from John P. Cook to you, embraced & included in the aggregate amount of consideration that you state, in answer to int. 392, was about $44,000?

Ans. It is.

Int. 508. Was the judgment against James May recovered in the United States court in Illinois, & assigned to you, as stated in previous answers on this examination, included & specified in the schedule of assetts made out by the members of the firm of Cook & Sargent, and

annexed to their assignment to you and J. W. Drury as a claim against you, & an assett in the hands of Cook & Sargent?

(Objected to as immaterial, and because the schedule is the
1594 best evidence.)

Ans. I do not know.

Int. 509. Will you please examine the schedule of assetts annexed to their assignment, and state whether or not that judgment, refered to in the last interrogatory, is included under the head of assetts in general ledger accounts as a claim against you & an assett of the firm of Cook & Sargent?

(Objected to for the same reasons as the last interrogatory.)

Ans. I will do so.

Int. 510. Please look upon the paper now shown you, and state whether or not that is the original inventory of the assetts prepared & filed by the assignees of Cook & Sargent with the clerk of the district court of Scott County.

Ans. I believe it is.

Int. 511. State whether or not, in the inventory now shown you, under the head of "Bills receivable," there is a claim against yourself
1595 falling due on the 24th day of December, 1859, of $990 72.

(Objected to as immaterial, and because the document refered to in the interrogatory is the best evidence.)

Ans. That is the same amount that I spoke of in a former answer as the amount of my overdraft on Cook & Sargent.

Int. 512. Is that the amount which you refer to in a former answer as being due the firm of Cook & Sargent on your deposite account with the firm?

(Objected to as immaterial.)

Ans. It is the same amount.

Int. 513. Does this inventory of assetts refered to in int. 510, & your answer thereto, contain a seperate statement or schedule of amounts due from depositors?

(Objected to for same reasons as interrogatory 511.)

Ans. I believe it does.

1596 Int. 514. If this sum of $990 72 is the amount due from you to Cook & Sargent on your deposite account, why is it included in the schedule or inventory prepared by you under the head of bills receivable, and not under the head of deposite accounts?

(Objected to as immaterial.)

Ans. I suppose the reason was that I gave a receipt or statement that this $990 72 was to apply on some of those debts for which I was endorser when they became due.

Int. 515. Please state whether this inventory refered to in int. 510 & the answer thereto was sworn to by yourself & J. W. Drury.

(Objected to for the same reasons the 511 int.)

Ans. It was.

Int. 516. At what time?

(Objected to for the same reasons as the 511 int.)

Ans. On the 12th day of February, 1861.

1597 Int. 517. Do you recollect that any receipt was given for this amount of $990 72, as stated by you in answer to interrogatory 514?

(Objected to as immaterial.)

Ans. I do recollect of giving a receipt or some kind of a paper, showing how the amount was to be paid.

Int. 518. You say in answers to int. 435, that you think that this

amount of overdraft on your account was deducted from the amount of liabilities which you assumed for them, (Cook & Sargent,) and you say in answer to int. 498, that at the time of the deeds of Cook & Sargent to you, you agreed to assume the amount of the four several notes upon which you were liable for them. Now, if you agreed to assume the payment of those notes at the time those conveyances were executed to you, will you state why or for what purpose this receipt which you refer to in your last answer was executed?

1598 (Objected to as immaterial.)

Ans. I suppose that receipt or paper was to show how the amount was settled.

Int. 519. If it was settled, why was it included by you at all in the inventory of assetts prepared by you as assignee?

(Objected to as immaterial.)

Ans. The book-keeper drew up the inventory from the books, and included a good many accounts which were settled but which did not appear by the books to be settled. These accounts were marked with offsets opposite to them.

Int. 520. If the book-keeper included in this schedule or inventory of assetts claims which had been settled, why did you not correct the inventory before it was sworn to?

(Objected to as immaterial.)

Ans. I suppose they were sworn to with the remarks & offsetts opposite the different accounts.

(Objected to by complainant's solicitor as not responsive to the question.)

1599 The further taking of these depositions is here adjourned until to-morrow, March 22d, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

TUESDAY, *March 22d*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 521. Interrogatory 419 now repeated.

(Objected to as immaterial.)

Ans. The aggregate amount of the notes of Burrows & Prettyman turned over to me was $35,000. They were in connection with the deed of John P. Cook, dated December 29th, 1859.

Int. 522. What do you mean by your last answer when you say that they, the notes, were in connection with the deed of John P. Cook, dated December 29th, 1859?

(Objected to as immaterial.)

Ans. I mean that that deed was a sort of trust deed, conveying

1600 to me the property to be held in trust to secure the payment of those notes. The property conveyed by this deed was conveyed by Burrows & Prettymen to John P. Cook, to secure payment of the said notes, then held by Cook & Sargent against Burrows & Prettyman, by a deed absolute in form, but Cook & Sargent at the same time executed to Burrows & Prettyman a bond reciting the said conveyance to John P. Cook & its object as already stated, & conditioned for the reconveyance of said property to Burrows & Prettyman on payment of said notes. The notes were turned over to me as before stated & John P. Cook at the same time executed to me the said deed of December 29th, 1859, conveying to me the property so held to secure said notes, subject to the terms of said bond, which is refered to therein.

Int. 523. You stated in answer to int. 504, that you would refresh

your recollection by an inspection or examination of the schedule refered to in that interrogatory, and then state whether or not that note of 4,500 refered to therein was specified & includeded therein as one of
1601 the liabilities to you. Please now to state whether you have refreshed your recollection by an examination & inspection of said schedule; and, if so, whether or not that note of $4,500 is specified & included in that schedule as one of the liabilities of Cook & Sargent to you.

Ans. I looked for the schedule at the office, and was informed that Judge Drury had the papers, and he is away at present, so that I am unable, on account of the absence of Judge Drewry, in whose possession the said schedule is, to refresh my recollection by an examination thereof so as to answer either this interrogatory (refering to int. 504) or int. 509.

Int. 524. Was the lot situated on Main street, in Davenport, which you state as having been owned by Ebenezer Cook at the time of the failure of Cook & Sargent, subsequently sold by you as executor of the estate of Antoine Le Claire, and as belonging to his estate?

1602 Ans. It was.

Int. 525. Did any other person than yourself qualify as executor of the last will and testament of Antoine Le Claire? and, if so, state who.

(Objected to because there is record evidence of the matter enquired about.)

Ans. There did; Mrs. Marguerite Le Claire, the widow of Antoine Le Claire.

Int. 526. Has she acted in connection with you as executor of said estate?

Ans. She has.

Int. 527. About what age is she?

(Objected to as immaterial.)

Ans. About sixty, I should think.

Int. 528. Who has had the principal charge of the settlement of the estate of Antoine Le Claire, as executor of the same?

Ans. I have had the principal charge & done the active part of the business.

1603 Int. 529. Do you recollect at any time after the death of Antoine Le Claire, of calling upon her, Margurite Le Claire, to sign a deed conveying Rose Bank to one or more of the children of Joseph A. Le Claire?

Ans. I never did.

Int. 530. Are you acquainted with the discription of the land owned by Antoine Le Claire in the forepart of the year 1859, situated on an island about three miles below Le Claire?

Ans. I do not know the discription by survey. I know the estate of Antoine Le Claire has some land on that island.

Int. 531. Have you in your possession, as executor, and can you produce, any deed to Antoine Le Claire, or any other instrument in your possession, as such executor, which contains a discription of that property on the island, refered to in the last interrogatory?

Ans. I do not recollect whether we have any of these old deeds in our possession.

1604 Int. 532. Do you know that Antoine Le Claire in the winter of 1858–'9 claimed or owned a piece or pieces of land on the Iowa mainland, near said island, about three miles below Le Claire?

(Objected to because the title to real estate cannot be proved by parole evidence, there being better evidence thereof.)

Ans. I believe he did.

Cross-interog. No. 1 to No. 82.

The solicitor for the defendants, saving and reserving all exceptions to the taking of these depositions, and to the competency of any question put on the direct examination, propounds the following cross-interrogatorys:

Cross-int. 1. Will you specify which of the property described by you in your answers, to direct interrogatories 46 to 52, inclusive, is
1605 that conveyed to you by John P. Cook, and which was held by Cook & Sargent to secure the notes of Burrows & Prettyman, as stated by you in your direct examination?

Ans. It was one 80 in Scott County; three 80's in Muscatine County; five 80's in Clinton County, and the town lots and 23-acre lot in Fulton, and the ¼ interest in the town of Camanchie.

C. int. 2. What was the pecuniary condition of the firm of Barrows & Prettyman, makers of said notes, at the time the same were transfered to you by Cook & Sargent?

(Objected to by complainant on the ground that it is not cross-examination of any matters inquired of by complainant.)

Ans. They had failed and were considered worthless.

C. int. 3. What was the value of the said property so held as
1606 security for said notes and conveyed to you by John P. Cook at the time of such conveyance?

(Objected to for the same reasons as the last preceeding int.)

Ans. Not exceeding $5,000.

C. int. 4. What did you do with said notes?

(Objected to for the same reasons as the 2d cross-int., and also as immaterial.)

Ans. There was a suit commenced by me in the counties of Scott, Clinton, & Muscatine, to foreclose the mortgage or deed of trust, and the property was sold under the decree of court.

C. int. 5. Have you ever collected anything on the said notes, otherwise than by such foreclosure & sale; if so, how much?

(Objected to for the same reasons as the last preceeding int.)

Ans. I never have collected anything.

C. int. 6. In your direct examination you speak of lots in
1607 Florance, Nebraska, & land in Nebraska as having been conveyed to you by Cook & Sargent. Was the title to any specific lots or land there situate so conveyed to you, or was the conveyance of a different character; &, if so, what?

(Objected to for the same reasons as the 4th cross-int., and also as calling for the contents of a written instrument in the possession of the witness.)

Ans. There was not. The interest conveyed to me was the interest of Cook & Sargent in the business house of Cook, Sargent & Parker in Florance.

C. int. 7. Of whom did the said business house of Cook, Sargent & Parker consist?

(Objected to for the same reasons as int. 4.)

Ans. It was composed of Cook & Sargent, and Cook, Sargent & Downey, of Iowa City; & Cook, Sargent & Cook, of Des Moines; and J. M. Parker, of Florance, Nebraska.

C. int. 8. What lands & lots situated in Nebraska did you refer
1608 to in your direct examination as having been conveyed to you by Cook & Sargent?

Ans. The lands and lots belonging to the firm of Cook, Sargent & Parker.

C. int. 9. Under or by means of such conveyance have you ever obtained title to any specific lands or lots; if so, what?

(Objected to for the same reasons as to the 4th cross-int.)

Ans. I never have.

C. int. 10. What, if anything, have you realized from the said interest in the Nebraska property so conveyed to you?

(Objected to for the same reasons as the 4th cross-int.)

Ans. I have never realized anything.

C. int. 11. What, so far as you know, was the value at the time of the conveyance to you and since that time of the said interest in the said Nebraska property so conveyed to you?

(Objected to for the same reasons as the 4th cross-int., and
1609 also because the witness has not shown himself possessed of any knowledge on the subject, or competent to testify about it.)

Ans. From my knowledge and belief I should estimate it at not exceeding $8,000.

C. int. 12. What real estate other than this Nebraska property and that conveyed as security for the Burrows & Prettyman notes did Cook & Sargent, or John P. Cook, on behalf of said firm, convey to you as stated in your direct examination?

Ans. They conveyed to me 7 or 8 lots in the city of Davenport, known as a part of the "Cannon mill property," situated in the lower part of the city; is all.

C. int. 13. What was the value of said property so conveyed to you as stated in your last answer, at the time of such conveyance?

1610 (Objected to for the same reasons as cross-int. 4.)

Ans. It was worth about $5,500.

C. int. 14. Have you sold the said last-mentioned property; if so, when, to whom, and for what price?

(Objected to for the same reasons as cross-int. 4.)

Ans. I sold it, I think, about a year afterwards—I am not sure about the time—to French & Davies, for $5,500; the first offer I could get for it and the only offer I could get for it at that time.

C. int. 15. Did you make any investigation or examination, at any time after it was conveyed to you, into the nature & value of the interest in the said Nebraska property conveyed to you; if so, what?

(Objected to for the same reasons as cross-int. 4.)

Ans. I visited Florance twice to get a division of the property, so as to get my interest. There was a good deal of the property
1611 was in dispute and litigation. The business was in an unsettled state. I investigated the condition of the land and estimated the value of my interest at about $8,000.

(All that part of this answer not responsive to the question is objected to by complainant's solictor for that reason.)

C. int. 16. Was the property so conveyed to you by Cook & Sargent, or by John P. Cook, in behalf of said firm, conveyed to you absolutely, or by way of security only?

(Objected to for the same reasons as cross-int. 6.)

Ans. It was conveyed to me absolutely.

C. int. 17. What, if anything, did you do or agree to do, in consideration of such conveyances?

(Objected to for the same reasons as cross-int 4.)

Ans. I agreed to pay the notes & acceptances which I had given for them, Cook & Sargent.

Cross-interog. No. 1 to No. 82.

The solicitor for the defendants, saving and reserving all exceptions to the taking of these depositions, and to the competency of any question put on the direct examination, propounds the following cross-interrogatorys:

Cross-int. 1. Will you specify which of the property described by you in your answers, to direct interrogatories 46 to 52, inclusive, is
1605 that conveyed to you by John P. Cook, and which was held by Cook & Sargent to secure the notes of Burrows & Prettyman, as stated by you in your direct examination?

Ans. It was one 80 in Scott County; three 80's in Muscatine County; five 80's in Clinton County, and the town lots and 23-acre lot in Fulton, and the ¼ interest in the town of Camanchie.

C. int. 2. What was the pecuniary condition of the firm of Barrows & Prettyman, makers of said notes, at the time the same were transfered to you by Cook & Sargent?

(Objected to by complainant on the ground that it is not cross-examination of any matters inquired of by complainant.)

Ans. They had failed and were considered worthless.

C. int. 3. What was the value of the said property so held as
1606 security for said notes and conveyed to you by John P. Cook at the time of such conveyance?

(Objected to for the same reasons as the last preceeding int.)

Ans. Not exceeding $5,000.

C. int. 4. What did you do with said notes?

(Objected to for the same reasons as the 2d cross-int., and also as immaterial.)

Ans. There was a suit commenced by me in the counties of Scott, Clinton, & Muscatine, to foreclose the mortgage or deed of trust, and the property was sold under the decree of court.

C. int. 5. Have you ever collected anything on the said notes, otherwise than by such foreclosure & sale; if so, how much?

(Objected to for the same reasons as the last preceeding int.)

Ans. I never have collected anything.

C. int. 6. In your direct examination you speak of lots in
1607 Florance, Nebraska, & land in Nebraska as having been conveyed to you by Cook & Sargent. Was the title to any specific lots or land there situate so conveyed to you, or was the conveyance of a different character; &, if so, what?

(Objected to for the same reasons as the 4th cross-int., and also as calling for the contents of a written instrument in the possession of the witness.)

Ans. There was not. The interest conveyed to me was the interest of Cook & Sargent in the business house of Cook, Sargent & Parker in Florance.

C. int. 7. Of whom did the said business house of Cook, Sargent & Parker consist?

(Objected to for the same reasons as int. 4.)

Ans. It was composed of Cook & Sargent, and Cook, Sargent & Downey, of Iowa City; & Cook, Sargent & Cook, of Des Moines; and J. M. Parker, of Florance, Nebraska.

C. int. 8. What lands & lots situated in Nebraska did you refer
1608 to in your direct examination as having been conveyed to you by Cook & Sargent?

Ans. The lands and lots belonging to the firm of Cook, Sargent & Parker.

C. int. 9. Under or by means of such conveyance have you ever obtained title to any specific lands or lots; if so, what?

(Objected to for the same reasons as to the 4th cross-int.)

Ans. I never have.

C. int. 10. What, if anything, have you realized from the said interest in the Nebraska property so conveyed to you?

(Objected to for the same reasons as the 4th cross-int.)

Ans. I have never realized anything.

C. int. 11. What, so far as you know, was the value at the time of the conveyance to you and since that time of the said interest in the said Nebraska property so conveyed to you?

(Objected to for the same reasons as the 4th cross-int., and
1609 also because the witness has not shown himself possessed of any knowledge on the subject, or competent to testify about it.)

Ans. From my knowledge and belief I should estimate it at not exceeding $8,000.

C. int. 12. What real estate other than this Nebraska property and that conveyed as security for the Burrows & Prettyman notes did Cook & Sargent, or John P. Cook, on behalf of said firm, convey to you as stated in your direct examination?

Ans. They conveyed to me 7 or 8 lots in the city of Davenport, known as a part of the "Cannon mill property," situated in the lower part of the city; is all.

C. int. 13. What was the value of said property so conveyed to you as stated in your last answer, at the time of such conveyance?

1610 (Objected to for the same reasons as cross-int. 4.)

Ans. It was worth about $5,500.

C. int. 14. Have you sold the said last-mentioned property; if so, when, to whom, and for what price?

(Objected to for the same reasons as cross-int. 4.)

Ans. I sold it, I think, about a year afterwards—I am not sure about the time—to French & Davies, for $5,500; the first offer I could get for it and the only offer I could get for it at that time.

C. int. 15. Did you make any investigation or examination, at any time after it was conveyed to you, into the nature & value of the interest in the said Nebraska property conveyed to you; if so, what?

(Objected to for the same reasons as cross-int. 4.)

Ans. I visited Florance twice to get a division of the property, so as to get my interest. There was a good deal of the property
1611 was in dispute and litigation. The business was in an unsettled state. I investigated the condition of the land and estimated the value of my interest at about $8,000.

(All that part of this answer not responsive to the question is objected to by complainant's solictor for that reason.)

C. int. 16. Was the property so conveyed to you by Cook & Sargent, or by John P. Cook, in behalf of said firm, conveyed to you absolutely, or by way of security only?

(Objected to for the same reasons as cross-int. 6.)

Ans. It was conveyed to me absolutely.

C. int. 17. What, if anything, did you do or agree to do, in consideration of such conveyances?

(Objected to for the same reasons as cross-int 4.)

Ans. I agreed to pay the notes & acceptances which I had given for them, Cook & Sargent.

1612 C. int. 18. Do you mean by the notes and acceptances refered to in your last answer the four instruments mentioned in your direct examination and therein stated to have been held respectively at the Merchants' Bank, Washington Bank, and at the Freeman's Bank, of Boston, or do you mean other & different instruments; if so, what?

(Objected to for the same reasons as cross-int. 4, and also as leading, and assumes a state of facts which it is not shown to exist.)

Ans. I mean the four instruments mentioned in my previous answers as being at the Merchants' Bank, Washington Bank, & Freeman's Bank.

C. int. 19. What consideration, if any, did you receive for becoming liable upon those instruments?

(Objected to for the same reasons as cross-int. 4.)

Ans. I never received anything.

1613 C. int. 20. For what purpose or object did you put your signature thereto?

Ans. For the accommodation of Cook & Sargent.

C. int. 21. You state in your direct examination that you have no personal knowledge whether those instruments were negotiated by Cook & Sargent prior to December 16th, 1859. Do you know where and by whom they were held, respectively, at the time of their maturity? If so, state.

(Objected to for the same reasons as cross-int. 4.)

Ans. I do. They were held, two of them, by the Merchants' Bank; one of them by the Washington Bank; & one by the Freeman's Bank.

C. int. 22. State whether or not you took up the said instruments.

(Objected to for the same reasons as to cross-int. 4.)

Ans. I did.

1614 C. int. 23. When did you first hear that, under the agreement between the complainant & Antoine Le Claire, the complainant was to have a year to remove the incumbrances from said Rose Bank farm?

Ans. I do not recollect at what time I first heard it.

C. int. 24. Do you recollect whether or not you heard it at or about the time when you first heard of said agreement, or whether you have learned it since?

(Objected to on the ground that the witness being a party interested, a question of the kind proposed being one applicable only to a cross-examination, cannot properly be put to the witness, but he should be instructed to the general inquiry—when he first heard of the matters inquired about.)

Ans. I think I did; but do not recollect the time when I first heard of the agreement.

The further taking of these depositions is here adjourned until 9 o'clock a. m., to-morrow, March 23d, A. D. 1864.

1615 R. LINDERMAN, *Com'r.*

MARCH 23D, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

C. int. 25. In your direct examination you speak of certain notes belonging to the estate of Antoine Le Claire which were delivered to the executors after his death by Cook & Drury, or John P. Cook, one of said firm; and you say in answer to interrogatory 119, that you think said notes were so delivered at the office of the executors. Do you recollect whether or not you were personally present at such delivery?

Ans. I do not.

C. int. 26. How much of the time have you been in the habit of attending personally at said office since you have been such executor?

Ans. I don't spend a great deal of time in the office; I am in and out during the day.

1616 C. int. 27. In answer to direct interrogatory 139 you say that you were a defendant in a suit brought by Antoine Le Claire to foreclose a mortgage of A. H. Davenport to him, but only as a judgment creditor. Can you state in how many foreclosure suits you have been made a party defendant, as a judgment creditor or otherwise having an interest in the property subject to the mortgage sought to be foreclosed, during the past six years?

(Objected to by complainant for the same reasons as urged and stated to cross-interrogatory 4 to this witness.)

Ans. I have been made a party to several suits as judgment creditor during that time. I am unable to state the number.

C. int. 28. What degree of personal attention have you been in the habit of giving to such foreclosure suits when so made party defendant as a judgment creditor?

(Objected to for the same reasons as cross-interrogatory 4 to this witness.)

1617 Ans. I have never given any personal attention to those suits.

C. int. 29. Where were you during the month of March, 1859?

Ans. I think I was in Florida in the month of March in that year.

C. int. 30. When did you leave Davenport, on your journey to Florida, & when did you return?

Ans. I think I left about the middle of February, 1859, and returned about the first of April.

C. int. 31. After your said return, and down to the time of the sale of said Rose Bank farm by Powers to Dessaint under the deed of trust, did you or not have any conversation or communication with Antoine Le Claire, or any of the other defendants in this suit, about said deed of trust, or about the sale of said farm? If so, with whom, and state the same.

1618 (Objected to by complainant, 1st, as leading and immaterial; 2nd, as not within the range of a cross-examination, it being an inquiry as to matters not refered to on the direct examination of this witness; 3d, as calling for the acts and declarations of the defendents in their own behalf.)

Ans. I have not.

C. int. 32. What knowledge or information had you down to the time of said sale of the existance of said trust deed, or of an intention to sell said farm thereunder?

Ans. I do not recollect that I had any.

C. int. 33. On the day of said sale, were you or not aware that such a sale was to take place on that day?

(Objected to by complainant for the same reasons as to cross-int. 31 to this witness.)

Ans. I do not recollect that I was.

C. int. 34. Were you present at said sale?

Ans. I was not.

1619 C. int. 35. What conversation or communication, if any, had you with any person before said sale, in reference to using any means or taking any steps for the purpose of preventing the complainant, May, from fulfilling his agreement with Antoine Le Claire in refer-

ence to the said Rose Bank farm, either by procuring said farm to be sold under said deed of trust or otherwise?

(Complainant objects to this interrogatory for the same reasons as are stated and urged to cross-int. 31 to this witness, and for the further reason that the witness being a party, cannot give in his own favour evidence in respect to matters not inquired about by the complainant on his direct examination.)

Ans. I never had any.

C. int. 36. What knowledge or information had you at or about the time of said sale, or prior thereto, of the existance of any plan, purpose, or intention on the part of Antoine Le Claire, or any other person or persons, to do or procure to be done anything for the purpose
1620 stated in the last preceeding interrogatory?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I had no such knowledge or information.

C. int. 37. What knowledge or information, if any, had you at or about the time of said sale, of any agency had by Antoine Le Claire or any of the other defendants in this suit, in procuring said farm to be sold under said trust deed?

(Objected to for the same reasons as cross-interrogatory 35 to this witness.)

Ans. I had no such knowledge or information.

C. int. 38. What knowledge or information, if any, have you of Antoine Le Claire's being interested, directly or indirectly, in the purchase of said farm at said sale?

(Objected to for the same reasons as cross-int. 35 to this witness.)

Ans. I have none.

1621 C. int. 39. What knowledge or information, if any, did you acquire or have you had since the said sale, of the existance of any plan or scheme on the part of A. Le Claire or any of the other defendants herein, to prevent said May from fulfilling his said contract with said Le Claire, or of said Le Claire or any of the others of said defendants having had anything to do with procuring said farm to be sold under said deed of trust, or of any interest said Le Claire had in the purchase of said farm at said sale, otherwise than by hearing of the charges made by said May in reference thereto?

(Objected to for the same reasons as cross-int. 35 to this witness, and also assuming facts not proved.)

Ans. I have no such knowledge or information.

C. int. 40. What knowledge or information, if any, have you of the title to said farm derived under said trust-deed sale and conveyance by Powers to Dessaint having been held by said Dessaint for Eben-
1622 ezer Cook in trust for Antoine Le Claire, or in any way for his (said Le Claire's) benefit?

(Objected to for the same reasons as the last preceeding cross-int. to this witness.)

Ans. I have no such knowledge or information.

C. int. 41. In your direct examination you speak of conveyances of real estate made by Cook & Sargent to Antoine Le Claire at or about the same time of the conveyances made by them to you. Do you know on what account, or for what consideration said conveyances were made?

Ans. They were made on account of accommodation paper made for Cook & Sargent by Antoine Le Claire.

(Answer objected to by complainant as not responsive to the question.)

C. int. 42. State, if you know, the amount of such paper, and whether

or not the payment thereof was assumed by Antoine Le Claire.
1623 (Objected to for the same reasons as cross-interrogatory 35 to this witness.)

Ans. I think the amount which he assumed to pay for them was about $60,000.

C. int. 43. What knowledge or information have you of the said sale under said trust deed having been made without the knowledge of the said May?

(Objected to for the same reasons as the 35th cross-interrogatory to this witness.)

Ans. I have none.

C. int. 44. What knowledge or information had you of the particular terms under which said property was offered for sale by said Powers, or of the manner in which said sale was conducted?

(Objected to for the same reasons as cross-int. 35 to this witness.)

Ans. I have no recollection of any such information or knowledge.

C. int. 45. Prior to your receiving the deed for said farm from
1624 Ebenezer Cook had you any conversation or communication with Antoine Le Claire, or any one acting for him or in his behalf, in reference to your taking such deed?

(Objected to for the same reasons as cross-int. 35.)

Ans. I had not.

C. int. 46. Was the said farm conveyed to you by Ebenezer Cook absolutely, or by way of security only?

(Objected to as calling for the contents of a written instrument, in the possession of the witness, which is the best evidence of whether the deed was absolute or qualified.)

Ans. It was absolute.

C. int. 47. For whose benefit was the said farm so conveyed to you, according to your understanding and agreement at the time?

(Objected to so far as it calls for the understanding of the witness, and to that part of it which calls for what the agreement was, on the
1625 ground that he has stated on this examination that the agreement was not made with him personally, but with his attorney.)

Ans. According to my understanding it was for my benefit.

(Answer objected to by complainant as simply giving the witnesses' construction or understanding of an agreement entered into by other persons than himself.)

C. int. 48. At or about the time you received said conveyance, was there any agreement or understanding between you and any other person that you should hold said farm in trust for such person or for his benefit, or that you should convey said farm to such person or according to his directions, when desired, or any simelar understanding or agreement; if so, with whom and what?

(Objected to for the same reason as cross-int. 35.)

Ans. There was not.

C. int. 49. You state in your direct examination, in answer to
1626 int. 180, that you do not recollect that you felt any interest in learning by what right or authority Navin was occupying the premises, or for how long a period he was entitled to occupy them, at the time you received your deed from Cook. Do you mean to be understood that you did not feel any interest in the matter, or that you do not recollect that at the time it entered into your thoughts or mind, or something else; if so, what?

(Objected to, 1st, as leading and suggestive of the answer desired; 2d, as incompetent & improper, for the reason that there is no ambiguety

or missapprehention to the answer of the witness to the orriginal question, and where the witness is a party he cannot, by questions of a direct character, be permitted to change or explain away the force or effect of his answers on the direct examination; &, 3d, if the witness desires to make an explenation of his answer he should do so of his own accord, and without interrogatories by his solicitor.)

1627 Ans. I think it was from a general knowledge that Navin was occupying the farm by the season, and that tenants usually occupy farms until the first of March.

C. int. 50. You say in your direct examination that the arrangment between yourself & Ebenezer Cook under which the conveyance was made to you by him was made through your attorney, Mr. Putnam. What instructions or authority did you give to your said attorney in reference to the matter?

(Objected to as immaterial, & as calling for declarations of the defendant, this witness, and conversations between himself and his attorney.)

Ans. There was no special instructions given; the instructions were general, to get all the securities he could from E. Cook & Cook & Sargent to secure me for my endorsments.

1628 C. int. 51. After the conveyance from Ebenezer Cook to you did you see Navin in reference to his giving up possession of the farm?

Ans. I do not recollect of speaking to Navin in reference to giving up the farm directly after the conveyance. I think Navin came to me during the winter to see about renting the farm.

The witness here stated that he did not understand the question when he answered as above, and now answers as follows, viz:

I think I gave him notice to give up the farm about the latter part of February, 1860.

C. int. 52. Had you previously to that had any conversation with him about the farm, after your deed from Ebenezer Cook?

(Objected to as calling for a conversation between this witness and the witness Neven, no part of which has been given on the direct examination.)

Ans. I think I had; do not recollect the conversation, but think he made application to rent.

1629 C. int. 53. What, if anything, did you agree to do in consideration of the said conveyance by E. Cook to you?

Ans. I was to pay the notes that I had endorsed for Mr. Cook.

C. int. 54. Did you agree to do this alone, or jointly with some other party; and, if so, whom?

(Objected to on the ground that the witness has already stated that he had no personal knowledge of the agreement, or what it was.)

Ans. I do not recollect whether there was any agreement that I should pay the whole of the notes, or pay them jointly with Mr. Le Claire.

C. int. 55. Is your knowledge of the agreement personal, or derived from information from your attorney?

Ans. I have no personal knowledge of any agreement; all my information is derived from my attorney.

1630 C. int. 56. Did you ratify or disagree to the agreement which your attorney informed you had been made?

Ans. I agreed to whatever he done in the matter.

C. int. 57. Did said Navin give up possession of the farm? If so, when, and to whom?

Ans. I think he gave up possession about the middle of March, 1860, to Mr. Wilson, to whom I had rented the farm.

Adjourned until to-morrow, March 24th, 1864, at 9 o'clock a. m.
R. LINDERMAN, *Com'r.*

MARCH 24TH, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

C. int. 58. Look at the paper now shown you and state whether or not it is the agreement between Joseph A. Le Claire & Antoine Le Claire mentioned by you on your direct examination, and stated by you
1631 to be in the hands of the attorneys for the estate of said Antoine Le Claire.

Ans. It is the agreement alluded to in my answer.

(The said paper is attached by copy marked "Defendants' Exhibit F.")

C. int. 59. Look at the signatures to said instrument and state if you know in whose handwriting they are.

Ans. The signatures "J. A. Le Claire" are in the handwriting of said Joseph A. Le Claire, and the signature "A. Le Claire" is in the handwriting of Antoine Le Claire.

C. int. 60. State, if you know, in whose handwriting the body of said instrument is, down to the first signature J. A. Le Claire.

Ans. It is in the handwriting of Joseph A. Le Claire.

C. int. 61. State, if you know, in whose handwriting is the remainder of the body of said instrument.

1632 Ans. In the handwriting of Mr. Charles E. Putnam, attorney for Mr. Le Claire.

C. int. 62. At the date of said agreement, to wit, November 21st, 1860, what interest, if any, had Antoine Le Claire in said Rose Bank farm?

(Objected to as asking for the opinion, or calling for the conclusion, of this witness upon one of the issues directly made and to be tried in this case, and in fact substituting the witness for the court; 2nd, because it is not an inquiry as to any fact which goes to show the interest or the absence of any interest which Antoine Le Claire had in Rose Bank farm, but simply asks for the opinion of this witness upon the facts connected with, or showing Antoine Le Claire's interest in the farm, and calling for a legal conclusion.)

Ans. He had no interest at that time.

C. int. 63. Did you, at or about the date of said agreement, make any agreement with Antoine Le Claire in reference to said farm?

(Objected to for the same reasons as cross-int. 35.)

1633 Ans. I did make an agreement about that time.

C. int. 64. Was said agreement in writing, or verbal?

(Objected to for the same reasons as cross-int. 35.)

Ans. It was a verbal agreement.

C. int. 65. State what said agreement was.

(Objected to on the ground that it is one of those instruments evidence of which is forbidden by the statute of this State unless the same is in writing; 2nd, the proof of this agreement is objected to on the ground that the agreement is within the statute of frauds, and also for the same reasons urged to cross-int. 35 to this witness.)

Ans. The agreement was to let Mr. Le Claire have the May farm and he pay the two notes of Ebenezer Cook, or their renewals, which he agreed to do.

(Answer objected to by complainant and to the proof & evidence therein set forth for the reasons—

1634 1st. The agreement or contract is one for the transfer of an interest in lands (other than a lease for a time not exceeding a year) from this witness to Antoine Le Claire, and is not in writing.

2nd. The agreement mentioned in said answer simply shows a promise on the part of Antoine Le Claire to answer for the debt of this witness for some 3d persons, & not being in writing, no parole evidence of such agreement is competent.)

C. int. 66. Do you know what it was that led to or occasioned the making of these agreements on the part of Antoine Le Claire & J. A. Le Claire, and that between yourself and Antoine Le Claire, so far as said agreement relates to the said farm? If so, state.

(Objected to for the same reasons as to cross-int 35. Question withdrawn.)

C. int. 67. Do you know any reason why Antoine Le Claire entered into said agreement with you to purchase said farm? If so, state.

1635 (Objected to for the same reasons as cross-int. 35, and also that it calls for the declarations of Antoine Le Claire, which are not competent in favour of the defendant against the complainant.)

Ans. Joseph A. Le Claire had importuned him to buy the farm for him, & a short time before this agreement between Joseph A. Le Claire and A. Le Claire refused to attended to the business of Mr. Le Claire, and absented himself from the office for some days, and the agreement made with me was done to effect a reconciliation between Mr. Antoine Le Claire & Joseph A. Le Claire.

(To all that part of this answer giving the declarations of J. A. Le Claire objected to as hearsay and incompetent.)

C. int. 68. State whether or not this agreement between you and A. Le Claire was carried into execution during the lifetime of A. Le Claire.

(Objected to for the same reasons as cross-int. 35.)

Ans. It was not.

1636 C. int. 69. Why not?

(Objected to for the same reasons as cross-int. 35, and also as an inquiry relating to a contract void by the statutes of this State.)

Ans. Because the two notes of Ebenezer Cook, or their renewals, had not been paid by Antoine Le Claire.

C. int 70. When you conveyed the said farm to Joseph A. Le Claire, junior, for what consideration, if any, to yourself, personally, did you so convey it?

Ans. The consideration was the payment of these two notes, or their renewals, refered to in my last answer.

C. int. 71. Payment by whom do you mean?

Ans. By the estate of A. Le Claire.

C. int. 72. At whose request, if any one's, was the conveyance made to Joseph A. Le Claire, jr., and not to Joseph A. Le Claire?

(Objected to on the ground that it calls for declarations which fall within the class of hearsay evidence.)

1637 Ans. At the request of Joseph A. Le Claire.

C. int. 73. State the whole transaction of the conveyance by you to Joseph A. Le Claire, junior, and all the facts thereof.

Ans. Joseph A. Le Claire was about to commence littigation with the estate to enforce this contract between him and Mr. A. Le Claire. The executors, after consulting with the attorneys of the estate and the attorney of Mrs. Marguerete Le Claire, it was thought to be for the best

interest of the estate to have me deed the farm to Joseph A. Le Claire, jr., as requested by Joseph A. Le Claire, and pay off the two notes, or their renewals mentioned in a previous answer, and when I delivered the deed the money and notes & other securities held by Joseph Le Claire were turned over to me, to hold until the estate of A. Le Claire paid the two notes made by Ebenezer Cook, or their renewals.

C. int. 74. State who were parties to the arrangment or transaction, stated by you in your last answer.

1638 Ans. Mrs. Margurite Le Claire, executrix, on the part of the estate, and myself and Joseph A. Le Claire.

C. int. 75. State whether or not Mrs. Marguerite Le Claire was personally consulted in reference to said transaction.

Ans. She was; and it was her especial wish and desire that the contract should be fulfilled between Joseph A. Le Claire and Mr. Antoine Le Claire.

(All this answer after the first two words in the first line objected to by complainant as not responsive.)

C. int. 76. In your answer to the 73d cross-interrogatory you speak of an attorney of Mrs. Marguerite Le Claire being consulted about the matter; state who said attorney was, and whether or not Mrs. Le Claire advised with him in reference to the matter.

Ans. Her attorney was James Grant, who she advised with in the matter.

C. int. 77. In your answers to the 463d direct interrogatory you
1639 speak of a settlement between the executors and J. A. Le Claire about his claims against the estate in April, 1862; what kind of a settlement was it that you refer to in said answers, and how effected?

Ans. That was a settlement of the balance of his claims against the estate, filed in the probate court & settled before the judge of said court by a hearing; by "probate court" I mean county court.

C. int. 78. What, if anything, had you personally to do with making out the inventory of the assetts of Cook & Sargent, filed by yourself & Judge Drury as assignes?

Ans. I had nothing to do with it personally; it was done by the bookkeeper and Mr. Drury, the assignee, who attended to the active part of the business.

C. int. 79. You state in your direct examination that the said inventory was sworn to by you and said Drury; will you please to state
1640 what it was that you swore, or made oath to in reference to the same.

Ans. That it was a true and full inventory and valuation of the estate of said assignors, which had come to our knowledge.

C. int. 80. State what, if anything, is entered in said inventory opposite the said item of $990 72 refered to in your direct examination?

Ans. The word "offset" is entered opposite to it.

C. int. 81. Have you in your possession the note of the complainant May, secured by the deed of trust on said farm, executed by said May to Charles Powers, and under which said farm was sold by said Powers to L. C. Dessaint? If so, please produce the same to the examiner in order that a copy thereof may be attached to your deposition as an exhibit.

(The complainant objects to this cross-interrogatory as not within the proper scope of a cross-examination of the witness and as an
1641 inquiry into matters in no wise refered to or inquired about on the direct examination of this witness.)

Ans. I have, and here hand it to the examiner.

(The said note is attached by copy marked defendant's Exhibit "G.")

C. int. 82. Do you know in whose handwriting the signature to said note is? and, if so, state.

(Objected to for the same reasons as the last preceeding cross-interrogatery.)

Ans. It is in the handwriting of James May.

Direct examination resumed.

Re direct int. 1. State if you know from whom Antoine Le Claire received the deed for the land he owned in the spring or winter of 1859, on an island about three miles below Le Claire, and the land which he owned at that time on the Iowa mainland, near said island?

1642 (Objected to because the deed is the best evidence, and as assuming facts not proved.)

Ans. I believe the deed was from Sophia Crossen to Mr. Le Claire.

Int. 2. Have you that deed in your possession as executor of the estate of Antoine Le Claire?

(Objected to as relating to matters not touched upon in the cross-examination.)

Ans. I do not know whether we have it in our possession or not. I do not recollect of seeing it.

Int. 3. State whether or not the deed of Sophia Crossen to Antoine Le Claire, to which you have refered in your answer to the 1st int. on this resumption of the direct examination, was or was not recorded.

Ans. I believe it was recorded.

Int. 4. Do you know whether or not the lands refered to in the
1643 1st int. on the resumption of your direct examination were ever bargained or sold to any one by Antoine Le Claire, after the first of April, 1859?

(Objected to as calling for parole evidence of transactions which, if they exhist at all, must be evidenced by writing, and because the question relates to matters not inquired about in the cross-examination.)

Ans. I do not.

Int. 5. Were they ever bargained or sold by him after that date, to your knowledge or information?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I find nothing upon record showing any such sale. I had an abstract made of the real estate belonging to the estate of Antoine Le Claire. All I know about a sale of it is that I understood it was included in the agreement between Antoine Le Claire & James May.

Int. 6. You say in answer to int. 96 on your direct examination
1644 that when you first heard this agreement (the agreement between May & Le Claire) that you understood that it was some kind of an exchange of Rose Bank farm for Le Claire property; now, please state whether the Le Claire property refered to in that answer to int. 96 is, as you understood, the property described in this deed from Sophia Crossen to Antoine Le Claire.

(Objected to for the same reasons as the 4th re-direct interrogatory, and as calling for hearsay.)

Ans. I think not; I did not know at that time that this property now mentioned was included in that agreement.

Int. 7. State what property then you refer to, as the Le Claire property, as stated in your answer to direct int. 96.

Ans. Property on the upper reserve.

Int. 8. Did not you at that time know the property you refer to
1645 in your last answer had been before that time conveyed by Antoine Le Claire to Adrian H. Davenport?

(Objected to as immaterial, and as inquiring about matters not inquired about in the cross-examination.)

Ans. I think I did.

Int. 9. State when, if at all, you was first informed that the property refered to in this deed from Sophia Crossen to Antoine Le Claire was included in this agreement between Antoine Le Claire & James May.

(Objected to for the same reasons as the 4th re-direct interrogatory, and as calling for hearsay.)

Ans. I do not recollect the time, but it was some time after I first heard of the agreement.

Int. 10. Will you please state what farm you refer to by the words "May farm," in answer to direct int. 476?

Ans. I refer to the May farm, or Rose Bank farm.

1646 Int. 11. Will you now state how many deeds in all were executed to you by the firm of Cook & Sargent, or by the individual member thereof, in December, 1859, or the early part of the year 1860, conveying firm property of Cook & Sargent?

(Objected to as immaterial.)

Ans. I do not recollect of but three in all conveying firm property of Cook & Sargent, but do not recollect whether those three were all made within the time asked for in the question.

Int. 12. Were either of these three deeds you speak of executed by all the members of said firm?

(Objected to as immaterial.)

Ans. There was two of them executed by John P. Cook, and one by the members of the firm.

Int. 13. State about the date of the deed executed by the members of the firm to you.

1647 Ans. I think it was in the fall of 1860.

Int. 14. State the dates of the two deeds of John P. Cook individually to you, conveying firm property of Cook & Sargent.

(Objected to as immaterial,)

Ans. I think one was dated the 17th day of December, 1859, and the other, I think, on the 29th day of December, 1859.

Int. 15. Are the three deeds refered to in your answers to the three preceeding interrogatories the only deeds conveying firm property of Cook & Sargent, executed to you since the 1st day of January, 1859?

(Objected to as immaterial.)

Ans. I do not recollect of any others, but there might be others.

Int. 16. Which of those three deeds included the lands for which, as you say, Cook & Sargent had given Burrows & Prettyman a bond?

(Objected to as immaterial.)

1648 Ans. It was the deed of December 29th, 1859, executed by John P. Cook.

Int. 17. Did that conveyance of the 29th of December embrace any property other than that conveyed by this bond of Cook & Sargent to Burrows & Prettyman?

(Objected to as immaterial.)

Ans. It did not.

Int. 18. After that conveyance to you of the 29th of December, did you commence suits to foreclose the equities of Burrows & Prettyman, in the lands described in that deed?

(Objected to as immaterial.)

Ans. I did commence a suit.

Int. 18¼. In what county?

Ans. Scott County.

Int. 19. Where these lands, described in that deed of the 29th of December, 1859, sold under the decree obtained in the suit refered to in your last answer?

1649 (Objected to as immaterial.)

Ans. They were.

Int. 20. On such sale, who became the purchaser?

(Objected to as immaterial.)

Ans. I think there was no other bidders, and the property was struck off to me.

Int. 21. Where was the sale made?

(Objected to as immaterial.)

Ans. There was one sale of the lands in Scott County at the court-house in Davenport. The property lying in Muscatine County was sold at the court-house in Muscatine, & the property lying in Clinton County was sold at De Witt at the court-house, by the sherriffs of the respective counties.

Int. 22. Were you present at the sales refered to in your last answer?

(Objected to as immaterial.)

1650 Ans. I do not recollect whether I was present at any more than the Muscatine sale.

Int. 23. Which of the three deeds that you have refered to as having been executed to you, conveying firm property of Cook & Sargent, embraced and included the Nebraska property?

(Objected to as immaterial.)

Ans. The last deed, made, I think, in the fall of 1860, conveying to me the interest of Cook & Sargent, in the house of Cook, Sargent & Parker, in the Nebraska property.

Int. 24. At the time of that conveyance, what interest did Cook & Sargent have, or claim to have, in the town of Florance?

(Objected to as immaterial.)

Ans. Only their share of the interest that the house of Cook, Sargent & Parker owned in Florance.

Int. 25. What share or interest did the firm of Cook, Sargent &

1651 Parker have at the date of that conveyance in the said town of Florance?

(Objected to as immaterial, and as calling for parole evidence of matters susceptable of documentory proof.)

Ans. I am not able to state what share they had in the town of Florance; I know that they had some two or three houses & lots, some vacant lots, and some out-lots, what number I am unable to tell.

Int. 26. What interest did you understand that you acquired in the town of Florance by that conveyance, at the time it was executed? Specify the number of lots or blocks in which you acquired an interest.

(Objected to as immaterial.)

Ans. I acquired Cook & Sargent's share of the interest of the firm of Cook, Sargent & Parker; but I have no means or list by which I can specify the number of lots or blocks.

Adjourned till 9 o'clock a. m., March 25th, 1864.

R. LINDERMAN, *Com'r.*

1652 MARCH 25TH, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 27. At the time of this conveyance of the members of the firm of Cook & Sargent to you of the Nebraska property, of what value did you estimate the Florance property?

(Objected to as immaterial.)

Ans. I do not know as I had any means of estimating the value of the property at the time of the conveyance, except the representations of Cook & Sargent, and they represented their whole interest in the house of Cook, Sargent & Parker to be at the value of about $1,500.

(All that part of this answer not responsive to the question objected to by complainant, and also objected to by the defendants.)

Int. 28. Did you, at the time of that conveyance of the Nebraska property to you, know how many blocks or lots, or fractions of lots, in Florance, were conveyed to you by the deed?

(Objected to as immaterial.)

1653 Ans. That deed spoken of in my former answers did not convey any lots or blocks in the town of Florance but Cook & Sargent's interest in the house of Cook, Sargent & Parker, and I have had no deed of conveyance from Cook & Sargent, or any of the members thereof, for any lands or lots in Nebraska.

(Answer objected to by complainant as not responsive to the question.)

Int. 29. In how many lots in Florance did you acquire an interest under that conveyance?

(Objected to as immaterial, the whole subject being totally foreign to any matters in issue in this cause.)

Ans. I do not know how many lots Cook, Sargent & Parker owned in the town of Florance; therefore I am unable to state in how many I acquired an interest by that conveyance.

Int. 30. Did you, at the time of that conveyance, or do you now,

1654 know anything about the number of lots in which you acquired an interest under that conveyance?

(Objected to as immaterial.)

Ans. All I know is that the house of Cook, Sargent & Parker, owned a number of lots in the town of Florance, and that I own the interest of Cook & Sargent in those lots.

(Answer objected to by complainant as not responsive to the question.)

Int. 31. When you was at Florance, on the occasions spoken of by you in your cross-examination, did you see Parker, whom you name as being one of the firm of Cook, Sargent & Parker?

(Objected to as immaterial.)

Ans. I did.

Int. 32. Did you not learn from him the number of lots in Florance to which Cook, Sargent & Parker had title at the time of this conveyance to you by Cook & Sargent?

(Objected to as immaterial and calling for hearsay.)

1655 Ans. I did, but do not recollect the number.

Int. 33. Was the number more or less than 100?

(Objected to for the same reasons as the last preceeding interrogatorry.)

Ans. I could not state positively; it might be 100, & it might be more.

Int. 34. Havent you any recollection about the number?

(Objected to for the same reasons as the 32 re-direct int.)

Ans. That is as near as I can recollect; it might have been 100 & it might have been more.

Int. 35. Didn't you, at the time that you visited Florance on those occasions, make a list or schedule of the lots in which you acquired an interest under this conveyance from Cook & Sargent?

(Objected to as immaterial.)

1656 Ans. I think not; the schedule or lists of the property were on the books of the firm.

(All this answer after the word "not" in the first line objected to by complainant as not responsive.)

Int. 36. Was the interest of Cook & Sargent in the property of the house of Cook, Sargent & Parker a two-third interest of the whole?

(Objected to as immaterial.)

Ans. I think not.

Int. 37. State what it was.

(Objected to as immaterial.)

Ans. I don't know exactly what their share would be.

Int. 38. In how many acres of land in Nebraska did you acquire an interest under this conveyance by Cook & Sargent to you?

(Objected to as immaterial.

Ans. I am unable to state precisley how many acres.

1657 Int. 39. About how many acres?

(Objected to as immaterial.)

Ans. I should think probably about 2,000 acres.

Int. 40. Do you recollect of stating, during your direct examination, that the interest which you acquired in the farm lands in Nebraska was a $\frac{2}{3}$ interest?

(Objected to as immaterial.)

Ans. I stated that I thought my interest would be about $\frac{2}{3}$, but it was only an opinion.

Int. 41. Do you still think so?

Ans. Upon reflection I do not think my interest will be so much.

Int. 42. Did you, at the time of the conveyance to you of this Nebraska land, understand, or were you informed, what interest Cook & Sargent had or claimed to have in these lands?

(Objected to as immaterial.)

1658 Ans. I did not know exactly what interest I was getting in those lands.

Int. 43. Do those lands, the interest in which Cook & Sargent conveyed to you, lie near the town of Florance?

(Objected to as immaterial.)

Ans. Some of them do.

Int. 44. Where do the others lie?

(Objected to as immaterial.)

Ans. Some of them lay back in the interior, and some of them in the adjoining counties.

Int. 45. Did you ever make a personal inspection or examination of the lands which you say lay back in the interior?

(Objected to as immaterial.)

Ans. I saw several tracts of the lands out there.

Int. 46. Did you make a personal inspection & examination of

1659 all the lands in which you acquired an interest by this conveyance from Cook & Sargent?

(Objected to as immaterial.

Ans. I did not.

Int. 48. Have you any personal knowledge of the quality or value of such of those lands as you did not examin?

(Objected to as immaterial.)

Ans. I have not.

Int. 49. Did you make any examination or inspection of any of this property lying in Nebraska before the conveyance of the same to you by Cook & Sargent?

(Objected to as immaterial.)

Ans. I never saw any of them before such conveyance.

Int. 50. You state in your answers previously given that this conveyance from Cook & Sargent conveyed or transfered to you the interest of Cook & Sargent in the house of Cook, Sargent & Parker; had
1660 that house at that time a large amount of personal property and assetts?

(Objected to as immaterial.)

Ans. They had not.

Int. 51. Have you a personal knowledge of what personal property or assetts they had at that time?

(Objected to as immaterial.)

Ans. All the knowledge I have is what the books represented.

Int. 52. Do you recollect now the amount of personal property and assetts represented by their books? If you do, state it.

(Objected to as immaterial.)

Ans. I do not.

Int. 53. Can you give an approximation to the amount?

(Objected to as immaterial.)

Ans. I cannot; they were not large, and mostly worthless.

1661 (All that part of this answer after the word "large" objected to by complainant as not responsive.)

Int. 54. Have you now in your possession the deed executed by Cook & Sargent, & conveying their interest in the house of Cook, Sargent & Parker to you?

(Objected to as immaterial.)

Ans. I have.

Int. 55. Please produce the same before the commissioner.

(Objected to, because the deed in question is totally irrelevant to this case.)

Ans. I havn't it here; will bring it up this afternoon.

Int. 56. When did the sales under the decree of the Scott County district court refered to by you take place?

(Objected to as immaterial.)

Ans. I do not recollect; it was some time in 1860.

1662 Int. 57. Have you sold any of these lands purchased by you at the sales under said decree, or do you still hold them all?

(Objected to as immaterial.)

Ans. I have sold some of them; and still hold some of them.

Int. 58. Have you sold any portion of the town property?

(Objected to as immaterial.)

Ans. I have sold none of the town property. I have sold the property known as the "Reaper lot," a 34-acre tract or lot near Fulton.

Int. 59. When was that sold by you and for how much?

(Objected to as immaterial.)

Ans. I sold it some time last fall for $300, less the back taxes, which made it net me about $275.

Int. 60. Do you recollect what portion of the farming lands bid in by you at those sales you have since sold?

1663 (Objected to as immaterial.)

Ans. I have sold three-eighths in Muscatine County; and an-

other in this county was sold to pay incumbrances upon it and some other property in the town of Fulton.

(All that part of this answer after the word "county," in the 3d line, objected to by complainant as not responsive to the question.)

Int. 61. Was the agreement entered into between you and the firm of Cook & Sargent (as a consideration for which you say you assumed the payment of the four instruments upon which you say you were liable for them) a written or verbal agreement?

(Objected to as immaterial.)

Ans. I think it was partly a verbal and partly a written agreement.

Int. 62. Will you produce before the commissioner, for the purpose of having a copy made as an exhibit, that portion of the agreement
1664 which you say was in writing?

(Objected to as irrelevant.)

Ans. I suppose I can do so.

Int. 63. Was that written agreement which you speak of signed by you personally, or by your attorney in your behalf?

(Objected to as immaterial.)

Ans. It was signed by me personally.

Int. 64. Was the verbal agreement which you refer to as part of the agreement between you & Cook & Sargent made by you in person, or by your attorney in your behalf?

(Objected to as immaterial.)

Ans. It was made by my attorney.

Int. 65. Have you any knowledge of what that verbal agreement was, except from information derived from your attorney or others?

(Objected to as immaterial.)

Ans. I have not.

1665 Int. 66. So far as you are informed, was the verbal portion of this agreement made at the same time with the written agreement, or before or after?

(Objected to as immaterial.)

Ans. It was before the written agreement.

The further taking of these depositions is here adjourned until to-morrow, March 26th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MARCH 26TH, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 67. At what time was the agreement between you and Ebenezer Cook made?

Ans. I do not know whether it was made on the day of their failure or afterwards.

Int. 68. Was the agreement between you & Ebenezer Cook a written or a verbal agreement?

Ans. It was a verbal agreement.

1666 Int. 69. Was it ever reduced to writing?

Ans. I think not.

Int. 70. About what time was that part of the agreement between yourself & the firm of Cook & Sargent which you say was in writing made or executed?

(Objected to as immaterial.)

Ans. I do not recollect the precise date; it was some time in the latter part of 1860.

Int. 71. Will you now produce to the commissioner the written agreement between you and Cook & Sargent refered to in your answer to int. 61 & 62, direct examination?

(Objected to as immaterial.)

Ans. I will as soon as I can find the agreement. I have looked for it but am as yet unable to find it.

Int. 72. Was that instrument made & executed at or about the
1667 time of the conveyance of the Nebraska property to you by Cook & Sargent?

(Objected to as immaterial.)

Ans. I think it was.

Int. 73. Had you, prior to that time, paid any or either of the four notes or instruments upon which you were liable, as stated by you, for the firm of Cook & Sargent?

(Objected to as immaterial.)

Ans. I took up those instruments as they became due, and gave my own notes in the place of them.

Int. 74. How many notes did you execute in the place of these instruments refered to in the last interrogatory?

(Objected to as immaterial.)

Ans. I think there was four notes given in the place of the four I took up.

Int. 75. Were these four notes, mentioned in your last answer, given before or after the instrument upon which you were liable for
1668 Cook & Sargent respectively matured?

(Objected to as immaterial.)

Ans. I am not certain; I think they were given a few days after they matured.

Int. 76. To whom did you deliver these notes?

(Objected to as immaterial.)

Ans. I don't recollect; I think they were sent to the Exchange Bank of Boston, and through it negotiated with the holders of the notes.

Int. 77. Who sent them to the Exchange Bank of Boston?

(Objected to as immaterial.)

Ans. I do not recollect whether I sent them, or my attorney sent them.

Int. 78. At what time, or how long after their date, were those notes payable?

(Objected to as immaterial.)

Ans. I think I got them discounted at four months.

1669 Int. 79. Who was the maker of these notes?

(Objected to as immaterial.)

Ans. They were made by Geo. L. Davenport.

Int. 80. State to whom, or to whose order, they were payable.

(Objected to as immaterial.)

Ans. I do not recollect; I think they were made payable to the presidents or cashiers of the banks that held the original paper.

Int. 81. Was any other person liable with you upon these notes, either as maker or endorser? If so, state whom.

(Objected to as immaterial.)

Ans. I think they were endorsed by Cook & Sargent, and Sargent & Dixwell; that is my recollection.

Int. 82. Now, were they not payable to the order of Cook & Sargent, or Sargent & Dixwell, or of both said firms?

(Objected to as immaterial.)

Ans. I do not recollect; they were renewed several times, and
1670 I do not now recollect how that was.

Int. 83. Have those notes been taken up?

(Objected to as immaterial.)

Ans. They have.

Int. 84. In what way?

(Objected to as immaterial.)

Ans. They were renewed by getting others discounted in their place.

Int. 85. Was the paper given for their renewal given by the same makers, and endorsed by the same endorsers?

(Objected to as immaterial.)

Ans. I think they was.

Int. 86. Was there more than one renewal of these notes?

Ans. I think now, that I took those notes up and gave new notes, and secured them by mortgage.

1671 Int. 87. State what length of time these notes ran that you gave on renewal of your notes, as stated by you.

(Objected to as immaterial.)

Ans. I think they were, some of them for sixty days, and some of them for four months.

Int. 88. When you took up these notes given by you, as stated, in renewals of your own, and secured them by your mortgage, had they matured?

(Objected to as immaterial.)

Ans. I think they had.

Int. 89. How long had they been due at the time of giving these mortgages?

(Objected to as immaterial.)

Ans. I do not recollect how long.

Int. 90. Had they been due several months?

(Objected to as immaterial.)

Ans. I think not.

Int. 91. Did you give any security by way of mortgage to secure
1672 the notes held by the Washington Bank before the 28th day of February, 1861?

(Objected to as immaterial.)

Ans. I do not recollect the date at present.

Int. 92. Did you give a mortgage to the Washington Bank on or about the 28th day of February, 1861, to secure the then amount of about $5,600?

(Objected to as immaterial.)

Ans. I do not recollect, but I think not.

Int. 93. Did you execute a mortgage to the Washington Bank upon property in Scott County, to secure the sum named of about $5,600?

(Objected to as immaterial, frivolous, & impertenant.)

Ans. I prefer to take time to examin the record, and ascertain what mortgages and the amounts I gave.

Int. 94. You state in your answers to the 41st cross-int. that the
1673 conveyances made by Cook & Sargent to Antoine Le Claire were made on account of accommodation paper made for Cook & Sargent; how do you know that?

Ans. I think I was so informed by the attorney of Mr. Le Claire, and I may have heard it from the parties themselves; I do not recollect.

Int. 95. If all you know about it is from information, why did you answer cross-int. 41, that you did know that the conveyances made by

Cook & Sargent to Antoine Le Claire were made on account of accommodation paper made by Antoine Le Claire for Cook & Sargent?

Ans. Because I supposed the knowledge I had alluded to in the previous answer justified the answer.

Int. 96. Are the other answers given by you to cross-interrogatories calling for your knowledge based upon your knowledge or your information?

(Objected to as vague and indefinate, not specifying any par-
1674 ticular answer or answers.)

Ans. I am unwilling to answer that question in so general a form; if any particular question is pointed out, I will give an answer.

Int. 97. Is your statement in answer to int. 42, that Le Claire assumed to pay for them (Cook & Sargent) about $60,000, based upon your own knowledge, or your information?

Ans. It was based upon information received from the attorney of Mr. Le Claire.

Int. 98. Have you any knowledge that Le Claire ever assumed to pay anything for them, (Cook & Sargent,) as a consideration for the conveyances made by Cook & Sargent to him? I do not call for your information, but your knowledge.

Ans. I have a knowledge of the payment of a great many notes by the estate, for which the conveyances were given; I have no di-
1675 rect personal knowledge of the transaction between the parties themselves.

Int. 99. How do you know that the conveyances were given for the payment of those notes?

Ans. I would prefer answering after dinner.

Adjourned until 2 o'clock p. m.

R. LINDERMAN, *Com'r.*

2 O'CLOCK P. M.

Examination resumed pursuant to adjournment, and the witness answers int. 99 as follows, to wit:

I only know on information.

Int. 100. Can you state from your own personal knowledge that any agreement was ever made between Cook & Sargent and Antoine Le Claire, by which Antoine Le Claire assumed, or agreed to pay, any paper upon which he was endorser, or in any way liable, for Cook & Sargent?

Ans. I have no personal knowledge; all my knowledge is from
1676 information.

Int. 101. Did any written agreement relating to the subject-matter of the last interrogatory between Cook & Sargent and Antoine Le Claire come to your hands, as executor of the estate of Antoine Le Claire?

Ans. I have no recollection of seeing such a paper.

Int. 102. Do you recollect of having seen a written agreement on that subject in the hands of the attorneys of Mr. Le Claire?

Ans. I do not.

Int. 103. Is your answer to cross-interrogatory 67, in these words, "Do you know any reasons why Antoine Le Claire entered into said agreement with you to purchase said farm? If so, state," based upon your personal knowledge, or upon information?

Before answering this interrogatory the witness desired cross-
1677 interrogatory 67 and the answer thereto to be read to him, which was done, and he then answered as follows:

Ans. My personal knowledge was obtained from conversations with both the parties.

(Answer objected to by complainant as not responsive to the question.)

Int. 104. Interrogatory 103 repeated.

Ans. The knowledge I had was based upon information obtained from both the parties before the transaction took place.

(Answer objected to by complainant as not responsive to the question.)

Int. 105. Were not all the reasons which you have assigned for making this agreement between Antoine Le Claire and yourself in answer to cross-interrogatory 67 derived from the statements or declarations of Joseph A. Le Claire and Antoine Le Claire?

Ans. So far as I understand the question, I think they were.

1678 Int. 106. Are you now prepared to answer interrogatory 93, put to you since the resumption of your direct examination? If so, please now to answer the same.

(Objected to because the said interrogatory is immaterial, impertenant, and frivelous.)

Ans. I am. I gave a mortgage to the Washington Bank dated February 28th, 1861, acknowledge the 5th of March, & recorded on the 6th day of March, 1861, on lot 4, block 67, & lots 5, 6, 7, & 8 in block 29, in the city of Davenport, to secure the payment of the following notes: one interest note, $150, payable October 1st, 1861; $150, payable April 1st, 1862; $150, payable October 1st, 1862; $2,500, payable April 1st, 1863; $75 00, payable April 1st, 1863; $75 00, payable October 1st, 1863; $2,500, payable April 1st, 1864.

1679 Int. 107. Was that given to secure the note of $5,000 which you say in your direct examination was at the Washington Bank, or the notes given in renewal thereof?

(Objected to for the same reasons as int. 106.)

Ans. It was given in renewal of that note.

Int. 108. At the date of this mortgage had either of the other four notes mentioned by you in this examination as being at the Washington, the Merchants', & Freeman's Bank in Boston, been paid or extinguished in any other manner than by the renewals you speak of?

Ans. The way I understand the question, the renewal of those notes had been extinguished previous to the date of that mortgage.

Int. 109. How or in what way had the renewals of those notes been extinguished prior to the date of that mortgage?

(Objected to for the same reason as the 106th int.)

1680 Ans. The renewals at the Merchants' Bank of Boston by notes secured by mortgage on real estate.

Int. 110. Was this mortgage which you speak of in your last answer, to the Merchants' Bank of Boston, a mortgage executed by you to J. K. Fuller about the 1st day of January, 1861?

Ans. It was.

Int. 111. How many of the original four notes, upon which you were liable for Cook & Sargent, were secured to the Merchants' Bank by this mortgage to J. K. Fuller?

(Objected to as immaterial, frivelous, & impertenant.)

Ans. It covered the amount of the original notes first spoken of in my previous answer—i. e., the two of them at the Merchants' Bank—one of $5,000, & another one, I think, of $4,500.

Int. 112. Did this mortgage to Fuller include and embrace the interest on the notes up to that time, or had the interest been previously paid?

1681 Ans. I do not recollect; but I think the interest had been previously paid. Before answering positively I would prefer making an examination.

Int. 113. At the date of this mortgage to the Washington Bank had the four notes or instruments upon which you were liable for Cook & Sargent, or either of them, been paid in any other manner than by the renewals and the mortgages to which you have refered?

(Objected to as immaterial, frivelous, & impertenant.)

Ans. They had not.

Int. 114. Did you at any time give any real estate security to secure the note held by the Freeman's Bank of Boston? If so, state where.

(Objected to as immaterial, frivelous, and impertenent.)

Ans. I never did.

Int. 115. How long after this agreement was made between
1682 your attorney & Cook & Sargent, which you speak of, before you were informed of it?

(Objected to as immaterial.)

Ans. I do not recollect.

Int. 116. Was it within two or three months afterwards?

(Objected to as immaterial.)

Ans. I think probably a few days afterwards.

Int. 117. At the time you received this information from your attorney did he advise you what real estate was to be conveyed, or other security transfered to you, by the firm of Cook & Sargent?

(Objected to as immaterial.)

Ans. The way I understand it is this: That when my attorney called on them to give me property or secureties, they proposed giving the Cannon & French mill property, which I agreed to take; but when the conveyance was made I found it conveyed only a portion of the
1683 Cannon mill property. He was then directed to call upon them for more property or more securities until he got enough to secure the payment of the note.

(Answer objected to by complainant as not responsive to the question.)

Int. 118. Did your attorney, Mr. Putnam, at the time he communicated to you the arrangement which he had made with Cook & Sargent, state to you what property they had agreed to convey or transfer to you?

(Objected to as immaterial.)

Ans. I think he did.

Int. 119. Did he tell you, at the time he told you what the contract or agreement was that he in your behalf had made with Cook & Sargent, that the agreement provided that you should assume & pay these four notes or instruments upon which you were liable for Cook & Sargent?

(Objected to as immaterial.)

Ans. From what I can recollect, I think that was my under-
1684 standing from what he told me.

Int. 120. At that time what property did he tell you that Cook & Sargent had conveyed or transfered to you, or were to convey and transfer, as the consideration for your assuming & paying these four notes?

(Objected to as immaterial.)

Ans. I do not recollect.

Int. 121. Did he at that time tell you that they had conveyed to you the Cannon & French mill property?

(Objected to as immaterial.)

Ans. I am not able to recollect.

Int. 122. Did your attorney, Mr. Putnam, give you the first information that you received of the contract he had made with Cook & Sargent in your behalf, before or after the conveyance of the Burrows & Prettyman property on or about the 29th of December, 1859?

(Objected to as immaterial.)

1685 Ans. I do not recollect posetively, but think he gave me the information before.

The further taking of these depositions is here adjourned until Monday, March 28th, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MONDAY, *March 28th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 123. When and from whom did you first learn that John P. Cook, or the firm of Cook & Sargent, had executed to you a deed of the Cannon & French mill property, dated December 17th, 1859?

(Objected to as immaterial.)

Ans. I think I first heard of it from my attorney who was attending to my business, probably about the time the deed was made or directly afterward.

Int. 124. At the time your attorney informed you that John P. Cook had executed the deed of December 17th, 1859, did he advise or

1686 inform you what the agreement was made by him as your attorney with Cook & Sargent?

(Objected to as immaterial and frivelous. And the defendants' solicitor protests against the whole course of the examination as conducted by the complainant's solicitor, as evidently not conducted in good faith for the purpose of throwing light on the issues in this cause, but either for the mere purpose of vexation & annoyance by protracting the examination to an enormus & unreasonable length, or for the purpose, under coler & pretence of taking testimony in this cause, of prying into the witnessis' private affairs in no way connected with the matters in controversy herein, for some purpose foreign to this cause not apparent.)

Ans. I do not recollect what he told me at the time particularly.

Int. 125. Did he ever advise you what the agreement was that he made with Cook & Sargent in your behalf?

(Objected to as immaterial.)

1687 Ans. I don't recollect precisley, but I am under the impression that he did.

Int. 126. Do you now recollect whether he did or did not inform you of what agreement he had made with Cook & Sargent in your behalf?

(Objected to as immaterial, and because the question has been repeatedly answered.)

Ans. I have stated before that I did not recollect what conversation took place, but my impression is that he did inform me what agreement he had made with them.

Int. 127. State what the agreement was that he informed you he had made in your behalf with Cook & Sargent.

(Objected to as immaterial and frivelous.)

Ans. I am unable at this time to recollect precisely what he stated to me the agreement was; my impression is that what he told me

1688 was that the various pieces of property turned out would secure me for the liabilities I had incured for Cook & Sargent.

Int. 128. What property do you mean in your last answer by the various pieces of property turned out?

(Objected to as immaterial and frivelous.)

Ans. I mean all the property they did turn out.

Int. 129. Do you include in this the Nebraska property, or only the property conveyed in December, 1859?

(Objected to as immaterial.)

Ans. I include all, for the reason that the agreement was not fulfilled till I was satisfied that they had given me enough to secure me & to pay fully the liability I had incured for them.

(All this answer after the word "all," in the first line, objected to by complainant as not responsive.)

Int. 130. If the original verbal agreement, as made by your
1689 attorney on your behalf with Cook & Sargent, provided for a conveyance of the Nebraska property, why did you make or enter into an additional written agreement with Cook & Sargent on the subject in the fall of 1860?

(Objected to as immaterial, and as assuming that to have been stated which has not been stated.)

Ans. I do not now recollect what those reasons were.

Int. 131. Was the original agreement, as you understood it, that you should assume the payment of the four notes upon which you were liable as endorser for Cook & Sargent, and should receive in consideration therefor the several pieces of property refered to in your answer to interrogatory 128 last above?

(Objected to as immaterial.)

Ans. The way I understand it, the original agreement was that I was to assume the payment of those four instruments and the liabilities attending them, and they were to turn out property and securities
1690 to me until I was satisfied I had enough to make me whole, and paid me for all liabilities & expense; and those various conveyances mentioned in my previous answers, and the securities turned over to me, were to carry out and fulfill their promise and agreement made with me and my attorney.

Int. 132. Were they to convey these various pieces of property to you absolutely, or was you simply to hold them by way of security and indemnity?

(Objected to as immaterial.)

Ans. According to my understanding, they were conveyed to me absolutely.

Int. 133. Was not the property described in the deed of December 17th as the Cannon & French property, or the property described in the deed of December 29th, refered to as the Burrows and Prettyman property, both or one of them conveyed to you simply as a security and as collatteral?

(Objected to as immaterial.)

Ans. I think not.

1691 Int. 134. Was it your understanding at the time you first heard of the conveyance of the Cannon & French property on the 17th December, 1859, and has it since been your understanding, that that property was conveyed to you absolutely, and not as collatteral?

(Objected to as immaterial, and because the question has already been repeatedly answered.)

Ans. That was my understanding then, and has been since.

Int. 135. Please look upon the paper or instrument now shown you, and state whether that paper is the original inventory of the property

& assetts of Cook & Sargent, filed by yourself & John W. Drury, as assignees of Cook & Sargent, with the clerk of the district court.

(Objected to as immaterial & frivelous.)

Ans. It is an inventory taken from the books of Cook & Sargent, made by the book-keeper & J. W. Drury, the other assignee, and signed by me and J. W. Drury, the other assignee.

1692 Int. 136. Was that paper or inventory sworn to by yourself & J. W. Drury as assignees? and, if so, state about when.

(Objected to as immaterial, and because the paper itself is the best evidence.)

Ans. It was sworn to about the 12th day of February, 1861, by myself and J. W. Drury, as assignees.

Int. 137. Is there embraced & included in said inventory, in the list of real estate, assetts, and, under the head of "real estate," as belonging to the estate of Cook & Sargent, the Cannon & French mill property in the words following: "Cannon & French mill property—title in George L. Davenport as collatteral for indorsments;" and at the end, in the figure columns, the words: "No value; over incumbrances?"

(Objected to for the same reasons as the last preceeding question.)

Ans. There is that statement.

1693 Int. 138. Have you present before the commissioner the deed executed by Cook & Sargent for the property in Nebraska? If so, please produce the same.

(Objected to as immaterial, the said deed being wholy irrelevant to the present cause.)

Ans. I will bring the deed up after dinner.

Int. 139. Have you now in your possession the four instruments upon which you state you were liable for Cook & Sargent, and which you say you took up?

(Objected to as immaterial, frivolous, and improper on re-examination.)

Ans. I have.

Int. 140. Have you in your possession the notes first given by you in renewal of those four notes?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I believe I have.

Int. 141. Have you in your possession the notes given by you on the subsequent renewals of those notes at the Boston banks?

1694 (Objected to for the same reasons as the 139 int.)

Ans. I believe I have.

Int. 142. Will you please produce before the commissioner the four original notes, togather with such renewals of the same as you have in your possession?

(Objected to for the same reasons as the 139 int.)

Ans. I will bring them up after dinner.

Int. 143. After the failure of Cook & Sargent did they negotiate with the Boston banks for an extention of the time of payment of the four notes, or was the negoetation made and conducted by you?

(Objected to for the same reasons as the 139th int.)

Ans. The negotiation was made for me by my attorney.

Int. 144. Why were the notes given in renewal of the four in-

1695 struments upon which you were liable for Cook & Sargent, endorsed by Cook & Sargent and Sargent & Dixwell?

(Objected to for the same reasons as the 139th int.)

Ans. I do not recollect the reason, but I think probably the banks required that kind of endorsement.

Int. 145. Were not those firms of Cook & Sargent & Sargent & Dixwell at that time insolvent?

(Objected to for the same reasons as the 139 int.)

Ans. They were so considered here.

Int. 146. Does the Freeman's Bank of Boston still hold your note as security for the amount due on the original instrument on which you were liable for Cook & Sargent, and which you say that bank held at maturity?

(Objected to for the same reasons as the 139th int.)

Ans. They do. They hold the renewals.

Int. 147. Is the note which that bank now holds due?

1696 (Objected to for the same reasons as the 139 interrogatory.)

Ans. I do not recollect whether it is all due or only partially due.

Int. 148. Is that note now held by the Freeman's Bank one made by you?

(Objected to for the same reasons as the 139 int.)

Ans. It is.

Int. 149. Is that endorsed by the firms of Cook & Sargent, or Sargent & Dixwell, or by either of said firms?

(Objected to for the same reasons as the 139 int.)

Ans. I believe they are not endorsed by either of those firms.

Int. 150. Are they endorsed by either or any of the members of those firms, or either of them?

(Objected to for the same reasons as the 139th int.)

Ans. I believe they are not.

1697 Adjourned untill 2 o'clock p. m.

2 O'CLOCK P. M.

Examination resumed pursuant to adjournment.

Int. 151. Are you now prepared to produce the deed for the Nebraska property from Cook & Sargent to you? If so, please produce the same.

(Objected to as immaterial, impertenant, & frivelous.)

Ans. I here produce and hand to the examiner said deed.

(The said deed is annexed by copy, marked "Exhibit V.")

Int. 152. Have you now present before the commissioner the four original instruments upon which you were liable for Cook & Sargent? If so, please produce the same.

(Objected to for the same reasons as int. 139 last preceeding.)

Ans. I have, and here produce and hand to the examiner said instruments.

1698 (The said instruments are annexed by copies, marked, respectively Exhibit 1, Exhibit 2, Exhibit 3, and Exhibit 4. Exhibits 1 & 2 are the notes held by the Merchants' Bank; Exhibit 3 is the note held by the Washington Bank; and Exhibit 4th is the note held by the Freeman's Bank.)

Int. 153. Have you now in your possession the notes or papers first given by you in renewal of the four instruments just by you handed to the commissioner, and refered to in your last answer? If so, please produce the same.

(Objected to for the same reasons as interrogatory 139 last preceeding.)

Ans. I have, and here hand them to the commissioner.

(The said instruments are annexed by copies; those given to Merchants' Bank marked Exhibit 5 and Exhibit 6; the one to the Washington Bank, Exhibit 7; and the one to the Freeman's Bank, Exhibit 8.)

1699 Int. 154. Have you in your possession any note or notes subsequently given by you in renewal for the amount at the Freeman's Bank? If so, please produce the same.

(Objected to for the same reasons as interrogatory 139 last preceeding.)

Ans. I have two, one of $5,666 67 and one of $5,666. These are all I have been able to find of these renewals in looking over my papers.

(The said two notes are attached by copy, marked respectively Exhibit 9 and Exhibit 10.)

Int. 155. Have you now in your possession that portion of the original agreement made between you & Cook & Sargent that you say was in writing? If so, please produce the paper containing the written part of that agreement.

(Objected to as immaterial and frivolous.)

Ans. I have looked over my papers, and have been unable to find any such agreement. I suppose I have been misled by the endors-

1700 ment on the deed for the Nebraska property, marked "Contract & sale." I supposed that was the contract refered to.

Int. 156. Do you desire now to be understood that the agreement between yourself and Cook & Sargent, to which you have refered as being partly verbal and partly in writing, was in fact partly in writing and partly verbal?

(Objected to as immaterial and frivelous.)

Ans. Being unable to find any written agreement, I may have been mistaken in stating that the agreement was partly verbal and partly in writing; it may have been all verbal.

Int. 157. If the agreement between you and them was all verbal and no part in writing, was the said verbal agreement the one which you refer to as having been made by your attorney in your behalf, about the 16th of December, 1859?

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I think it was.

1701 Int. 158. At about what time did the two notes of $5,000 each, endorsed by you and Antoine Le Claire, jointly, for Ebenezer Cook, mature?

(Objected to as improper on re-examination; and also because the question has already been put, and answered by the witness on his original direct examination.)

Ans. I do not now recollect, and cannot tell without examination.

Int. 159. State about what time.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I think they may have become due in January & February, 1860; but I am not certain.

Int. 160. Who held those two notes at the time they matured?

(Objected to as improper on re-examination, relating to nothing enquired about on the cross-examination, and as tending interminably to protract the examination of the witness.)

1702 Ans. I think one of them was in the hands of Clark, Dodge & Co., in New York, and the other at the Pacific Bank of Nantucket, I think; but am not positive untill I examine.

Int. 161. Were those notes taken up and others given in their place by way of renewal?

(Objected to for the same reasons as the last preceeding int.)

Ans. I think they were.

Int. 162. Have you in your possession the notes given by way of such renewal?

(Objected to for the same reasons as 160 int., last preceeding.)

Ans. I think I have.

Int. 163. Will you produce the same before the commissioner?

(Objected to for the same reason as the 160 int., last preceeding.)

Ans. I have not got them here. I will look for them and bring them up to-morrow.

1703 Int. 164. Have the two notes, endorsed by you and Antoine Le Claire, jointly, for Ebenezer Cook, been paid in any other way than by giving other paper in place of the same?

(Objected to for the same reasons as the 160 int., last above.)

Ans. I don't recollect untill I examin whether the two first notes were partly paid, or whether they were renewed and the renewals partly paid.

Int. 165. Have you any personal knowledge, or any knowledge other than, that derived from information from your attorney, what the original agreement was between your attorney, in your behalf and Cook, in regard to these two notes and the conveyance of Rose Bank to you?

Ans. I do not recollect; but I think I have none.

Int. 166. Are your answers to cross-int 46 & cross-int. 47 based upon your personal knowledge, or upon such information received from your attorney?

1704 Before answering the witness desired the said interrogatories and answers thereto to be read to him, which was done, & he then answered as follows:

Ans. I think they were based upon information from my attorney.

Int. 167. Do you desire to be understood that the agreement on the part of the estate of Antoine Le Claire refered to by you in your answers to cross-interrogatories 73 & 74 was made or entered into by only one of the executors?

Before answering the witness desired said cross-interrogatories & the answers thereto to be read to him, which being done, he answers as follows, to wit:

Ans. I think it was entered into by both of them.

Int. 168. Did you as executor assent to that agreement on the part of the estate?

1705 Ans. I did.

Int. 169. Was not the agreement then made by both the executors on the part of the estate?

Ans. The agreement to convey the farm to Joseph A. Le Claire, jr., was made by both the executors.

Int. 170. Was not the full agreement refered to in answers to cross-interrogatories 73 & 74, on the part of the estate, made and assented to by both of the executors?

Ans. I prefer answering that question to-morrow, as I would like to consult with my attorney before answering.

Int. 171. Was this agreement refered to by you in answer to cross-interrogatories 73 & 74 evidenced by any writing between the parties?

Ans. It was not.

Int. 173. Did Joseph A. Le Claire, at the time, execute any re-

1706 receipt or release of his claim against the estate?

Ans. I do not recollect. The business was done by the attorneys of the estate.

Int. 173. Who are the attorneys of the estate refered to?

Ans. Putnam & Rogers, and James Grant on the part of Mrs. Le Claire.

Int. 174. Under the agreement refered to, did the conveyance of Rose Bank to J. A. Le Claire, jr., by you, settle and extinguish all, or only part, of the claims of Joseph A. Le Claire, under the written agreement between him and Antoine Le Claire?

Ans. It settled only a part of the claims under that written agreement.

Int. 175. At the time of the making of this agreement, was there any written promise or undertaking on the part of the executors of Antoine Le Claire to pay the two notes or the renewals thereof, refered to by you in answer to cross-interrogatory 73?

Ans. I think not.

1707 Int. 176. What was the amount due on the two notes, or the renewals thereof, refered to in your answer to cross-interrogatory 73, which the estate of Antoine Le Claire assumed to pay as the consideration for your conveyance of Rose Bank to J. A. Le Claire, jr?

Ans. I do not recollect exactly; I think something over $9,000.

Int. 177. Can you ascertain so as to be able to state the precise amount by examination of your papers?

Ans. I think I can.

Int. 178. Will you please do so?

Ans. I will try and do so.

The further taking of these depositions is here adjourned until March 29th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

MARCH 29*th*—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

1708 Int. 179. Are you now prepared to answer interrogatory 170 put to you on yesterday? If so, please answer the same.

Ans. It was agreed to, in fact, but I do not know what the legal effect may be; I leave that for the court to determin.

Int. 180. Can you now state what, at the time of the agreement refered to by you in answer to cross-interrogatory 73, was the amount due on the 2 notes which the estate of Antoine Le Claire, under such agreement, assumed to pay as a consideration of your conveyance of Rose Bank to Joseph A. Le Claire, jr.? If you can, please do so.

Ans. It was $9,565.

Int. 181. Do you consider the notes & securities taken & withheld from the estate of Antoine Le Claire by Joseph A. Le Claire, and delivered by him to you at the time of your conveyance of Rose Bank to Joseph A. Le Claire, jr., good and collectable?

1709 (Objected to as immaterial.)

Ans. I consider them good and collectable with the exception of about $700.

Int. 182. Look upon the paper now shown you and state whether or not it is the inventory and appraisement of the personal estate of Antoine Le Claire, deceased.

Ans. It is.

Int. 183. Does said inventory & appraisement contain a list or schedule of the said securities belonging to the estate of Antoine Le Claire

which, as has been stated by you, were taken & withheld by Joseph A. Le Claire?

Ans. This contains a list of the notes in the hands of Joseph A. Le Claire appraised by us but not in our possession; said notes were negotiable, having been endorsed by Mr. Antoine Le Claire.

(All this answer after the word "possession" in the 4th line objected to by complainant as not responsive to the question.)

1710 Int. 184. Are the securities refered to and in said list described as being in the hands of Joseph A. Le Claire, the securities that were delivered to you by him on the conveyance of Rose Bank to J. A. Le Claire, jr.?

Ans. They are the securities that were in the hands of Joseph A. Le Claire & turned over to me; and part of them held by me, individually, and part turned over to the estate.

Int. 185. Please specify & designate the securities mentioned and described in that list or schedule which were turned over to you at the time of that conveyance, and which were delivered to the estate.

(Objected to as immaterial.)

Ans. The notes of H. M. White, $4,500; the notes of John Zimmerman, $1,900; the notes of Emma C. Zepp, $850; M. & Joseph Quinn, $210; A. C. Fulton, $750; Paul Deutch, $150; Mary E. Burtis, $400; certificate of deposit, $552; cash, $1,748 23; all of the above
1711 were turned over to me individually. The following were turned over to the estate: lot 5, block 95, & the east ½ lot 6, block 95, in the city of Davenport; this is property that J. A. Le Claire had bought in at trustee's sale, or on execution which belonged to[to] the estate, & the title to which he had taken in his own name, & a note of Butler of $60.

Int. 186. You speak on your direct examination of having received from J. A. Le Claire, in money, about $2,300 at the time of this conveyance; does that embrace the two items in this list designated as certificate of deposit in hands of J. A. Le Claire, $552, and cash in the hands of J. A. Le Claire, $1,748 23?

Ans. It does.

Int. 187. In this agreement entered into by the executors of Antoine Le Claire, & Joseph A. Le Claire, & yourself, as stated in your answers to cross-int's 73 & 74, what did Joseph A. Le Claire agree or assume to do?

1712 Ans. He was to relinquish his claim under this agreement in relation to Rose Bank against the estate, and agreed to take the conveyance of Rose Bank farm in fulfillment of that agreement.

Int. 188. Is that all that Joseph A. Le Claire agreed or assumed to do?

Ans. He agreed to give up those securities mentioned in my former answer that were in his hands.

Int. 189. What did the executors on the part of the estate agree to do?

Ans. They agreed to have the Rose Bank farm conveyed to Joseph A. Le Claire, jr., as per the agreement with Joseph A. Le Claire.

Int. 190. Is that all that the executors, on the part of the estate, agreed to do? If not, please state what else.

Ans. They agreed with me to pay the two notes, or their renewals, for which I was liable, if I would deed the farm to Joseph A.
1713 Le Claire, jr.

Int. 191. Are the two notes refered to in your last answer the amount or amounts which then remained due upon the two original notes endorsed by yourself & Antoine Le Claire for Ebenezer Cook, and the renewals thereof?

Ans. That was the amount due at that time; i. e., the time of making the conveyance to Joseph A. Le Claire, jr.

(Objected to by complainant as not responsive to the question.)

Int. 192. Are the two notes refered to in your answer to interrogatory 190 above notes which then remained unpaid, and which had been given in renewal of the two notes endorsed by yourself & Antoine Le Claire for Ebenezer Cook?

Ans. I think they are.

Int. 193. Did the executors agree absolutely to pay the amount of those two notes?

Ans. They did.

1714 Int. 194. Did you individually hold or receive any security for the performance of this agreement by the executors?

Ans. I did.

Int. 195. State what.

Ans. I received $2,300 in money, and securities amounting to $8,760.

Int. 196. Were those turned out to you simply as security for the performance of that agreement, or as the actual consideration for your conveyance of Rose Bank?

Ans. They were turned out to me, and held as security for the fulfillment of that agreement on the part of the estate.

Int. 197. Were you, as executor, under this agreement authorized to go on and pay up the amount due on those two notes refered to out of the money or property of the estate?

(Objected to as not proposing to the witness any question on a matter of fact, but asking his opinion on a matter of law.)

1715 Ans. I consider that I was authorized to do so.

Int. 198. Have you paid them, or any part of them, since, out of the money or property of the estate?

Ans. I have paid part of them.

Int. 199. How much, or what part?

Ans. I have paid all, except about $1,500.

Int. 200. What rate of interest did these notes draw after this agreement?

(Objected to as immaterial.)

Ans. I think they were drawing six & seven per cent.

Int. 201. Were the notes at the time of this agreement held by persons in this State or elseware?

(Objected to as immaterial.)

Ans. They were held elseware.

1716 Int. 202. Were they held by the persons or corporations by whom the original notes endorsed by you and Antoine Le Claire for Ebenezer Cook were held?

Ans. I think they were.

Int. 203. When were the payments, made by you as executor, on these two notes made?

Ans. They were paid at different times as they became due. Part of them had been divided up and made payable at different times, and part of them had been paid, and the balance renewed from time to time.

Int. 204. Were the notes refered to in your last answer as being given in renewal made by you?

Ans. They were.

Int. 205. Was the agreement between you & the executors, that you, individually, should take and hold this money & secureties received from Joseph A. Le Claire, and in case the executors failed to pay the two

1717 notes, that then the money & the securities were to be yours absolutely?

Ans. They were not. I held them as security, and when the notes were paid, they belonged to the estate, and a portion of them have already been turned over to the estate.

Int. 206. In case the two notes were not paid by the estate, were you then to deliver up these notes and securities to the estate?

Ans. I was not. I should have paid the notes out of them if the estate had failed to pay them.

Int. 207. What was the agreement on your part with the executors; what did you agree to do?

Ans. I agreed to deed this Rose Bank farm to Joseph A. Le Claire, jr., if the estate would pay the notes for which I was liable.

Int. 208. Have you, since the date of the conveyance of Rose
1718 Bank to J. A. Le Claire, jr., paid to Joseph A. Le Claire moneys belonging to the estate of Antoine Le Claire; if so, how much?

(Objected to as immaterial, having nothing to do with the subject-matter of this suit.)

Ans. I have paid him, or his order, money belonging to the estate, but cannot tell how much without an examination.

Adjourned to 2 o'clock p. m.

2 O'CLOCK P. M.

Examination resumed pursuant to adjournment.

Int. 209. Are you enabled now to state the amount of money which you have paid to Joseph A. Le Claire from the estate of Antoine Le Claire, since the conveyance of Rose Bank to J. A. Le Claire, jr? If so, state the amount.

(Objected to for the same reasons as the last preceeding question.)

Ans. We have paid him $180 since that time for service to the estate, and $1,000 on his claim.

1719 Int. 210. At the time this agreement between the estate, yourself, & Joes A. Le Claire, was made, was it a part and parcel of the same that he should receive or be paid these moneys upon his claim?

Ans. I do not recollect whether it was part of that agreement or not. The $180 that we paid him was for services rendered for the estate previous to that time.

After re-reading the interrogatory to the witness, he corrects his answer or answers as follows:

It was not.

Int. 211. Was it not part & parcel of that agreement, that if he would give up the money securities he held, the executors would see that his claim was arranged or paid?

(Objected to as indefinate & vague, not specifying what claim is intended by the question.)

Ans. I do not recollect that there was any other agreement than that to carry out the agreement between him & Antoine Le Claire to
1720 convey Rose Bank farm.

Int. 212. Was he to relinquish his other claims against the estate?

Ans. I do not recollect that he was.

Int. 213. What, if anything, was to be done with them?

(Objected to as immaterial, and as assuming what has not been proved or stated.)

Ans. I think they were to be paid. I do not recollect exactly what claims are refered to.

Int. 214. Was this agreement between the executors & yourself, & Joseph A. Le Claire, on your part as an individual, made by yourself in person, or by your attorney?

Ans. I think it was made in person & by attorney both, or through the attorneys of the estate.

Int. 215. You state in answer to cross-interrogatory 74, that the parties to the agreement were Mrs. Marguerete Le Claire, executrix, on
1721 the part of the estate, & yourself, & Joseph A. Le Claire; do you mean by that answer that there were three parties to the agreement, of which the estate was one, & Joseph A. Le Claire another, and yourself another?

Ans. I so considered that there was three parties.

Int. 216. Was that agreement on the part of yourself made by yourself in person, or was the agreement and the negotiations on your part made by your attorney?

(Objected to for obscurity and vagueness.)

Ans. I think the arrangement was made by the attorneys, and agreed to by myself and by the other parties.

Int. 217. Had you personally an attorney in making the agreement?

Ans. The attorneys of the estate were also my attorneys, but I think the attorneys acted for the estate in making this arrangment.

(Objected to by complainant as not responsive.)

1722 Int. 218. Did you individually advise or consult with any attorney in making this agreement refered to?

(Objected to as immaterial & frivolous.)

Ans. I do not recollect of consulting any attorney particularly on the question in my own behalf.

Int. 219. Was there, to your knowledge, any application to or any authority given by the county court to make the disposition of the estate of Antoine Le Claire, which was made by that agreement?

(Objected to as immaterial, it not being within the purview of this suit, or one of its objects to settle the accounts of the executors of the estate of Antoine Le Claire.)

Ans. As the arrangement was made by the attorneys, I suppose it was done under some general order of the court giving the executors power to arrange claims against the estate.

(Answer objected to by complainant as not responsive to the question.)

1723 Int. 220. Interrogatory 219 repeated.

(Objected to for the same reasons as to int. 219 & further because the record is the best evidence.)

Ans. I do not know of any special application. I think it was done under a general order giving the executors power to settle & arrange claims against the estate.

Int. 221. If given at all, was it given by virtue of a general order, refered to in your last answer, so far as you know?

(Objected to for the same reason as the last preceeding interrogatory.)

Ans. The legal part of the executorship of the estate of Mr. Le Claire having been attended to by the attorneys of the estate, I am unable to state personally under which order it was done, as there have been several orders granted, or whether it was under a general order.

(The complainant objects to all that part of this answer not responsive to the question.)

1724 Int. 222. Can you now produce before the commissioner the two notes first given in renewal of the notes endorsed for Ebenezer Cook by yourself and Antoine Le Claire? If yea, please do so.

(Objected to as not proper on examination.)

Ans. I can, and here produce them.

(The said notes are annexed by copies marked, respectively, Exhibit 11 and Exhibit 12.)

Int. 223. Have you in your possession the notes given in renewal of the two just produced? If yea, please produce the same.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. I have, and here produce them.

(The said notes are attached by copies. The one in renewal of Exhibit 12 is marked Exhibit 13, and the four in renewal of Exhibit 11 are marked, respectively, Exhibits 14, 15, 16, & 17.)

1725 Int. 224. Are the four notes, one of $2,060, & one for $1,650, & one for $1,605, & one for $150, notes given in renewal of the $5,000 note and the interest due thereon?

Ans. They are.

Int. 225. Have those four notes refered to in your last answer been paid by the estate of Antoine Le Claire since the agreement between yourself & Joseph A. Le Claire, & the executors of Antoine Le Claire mentioned by you?

Ans. They have.

Int. 226. At the time of the making of the draft of $4,000, which you say was drawn to take up one of the notes on which you & Antoine Le Claire were liable for Ebenezer Cook, were you indebted to Antoine Le Claire, or was there any money in your hands belonging to him?

(Objected to as immaterial.)

Ans. I do not recollect that there was either.

1726 Int. 227. At the time of drawing this draft or acceptance of $4,000, had a part of one of these notes for $5,000 endorsed by you & Antoine Le Claire for Ebenezer Cook been paid?

Ans. They had.

Int. 228. How much?

Ans. $1,000 & interest.

Int. 229. How was that paid?

Ans. I do not recollect; I think probably by draft on New York.

Int. 230. By whom was it paid?

Ans. I think it was paid by Mr. Le Claire.

Int. 231. At the time your answer was sworn to in this case in November, 1861, and during two or three months thereafter, what, in your judgement, was the value of Rose Bank farm?

(Objected to as immaterial.)

Ans. I should think about $7,000, as near as I can remember.

1727 Int. 232. From whom did you get the note produced by you on cross-examination, which you say was signed by James May, & of which a copy was made an exhibit?

Ans. I got it from my attorneys.

Int. 233. Do you mean your attorneys or solicitors in this case?

Ans. I do.

Int. 234. When did you get it?

Ans. I got it since the beginning of this examination; it had been in their hands for some time.

Int. 235. Do you know where they got it?

Ans. I understood it was handed over with the conveyance that was made at the time & handed over to my attorney Putnam; I do not know of my own knowledge where they got it.

1728 Int. 236. Do you know in whose handwriting the words on the

back "without recourse," and the signatures "N. H. & A. T. Strippel" are?

Ans. I do not.

Int. 237. Do you know anything about when that endorsment & those signatures were made thereon?

Ans. I do not.

Int. 238. Do you know whether or not the payees named in this note, Nicholas H. & Anthony T. Strippel, ever were partners in business?

Ans. I do not.

Int. 239. Are you acquainted with the handwriting of Charles Powers?

Ans. I have seen his writing.

The further taking of these depositions is here adjourned until March 30th, 1864, at 9 o'clock a. m.

R. LINDERMAN, *Com'r.*

1729 WEDNESDAY, *March 30th*, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

Int. 240. Please state in whose handwriting the body of the $5,000 note (a copy of which is annexed by the commissioner as Exhibit 11) is filled up.

(Objected to as immaterial.)

Ans. I do not know.

Int. 241. Are the signatures to that note, as makers, yours & Antoine Le Claire's?

Ans. They are.

Int. 242. In whose handwriting are the endorsments on the back of the notes.

Ans. The first one I think is J. A. Le Claire's, and my impression is that the other two are in the handwriting of Geo. B. Sargent.

Int. 243. In whose handwriting is the body of the draft or acceptance of $4,000, annexed by the commissioner to your deposition as Exhibit 13, filled up?

1730 Ans. It is filled up in the handwriting of Charles E. Putnam.

Int. 244. In whose handwriting is the signature of the drawer, A. Le Claire, and the signature of the acceptor or drawee, Geo. L. Davenport?

Ans. The signature of the drawer is in A. Le Claire's, & the signature of drawee or acceptor is in my own.

Int. 245. In whose handwriting is the endorsment on the back—A. Le Claire?

Ans. In A. Le Claire's.

Int. 246. State in whose handwriting the signatures are as drawer & acceptor of the draft now shown you, a copy of which is annexed by the com'r to your deposition as Exhibit 12 [is].

Ans. The signature of the drawer is A. Le Claire's, and the signature of the acceptor is my own.

1731 Int. 247. In whose handwriting is the endorsment or signature on the back, purporting to be that of A. Le Claire's?

Ans. Antoine Le Claire's.

Int. 248. In whose handwriting is the body of the four notes produced by you, copies of which have been appended by the com'r to your deposition as Exhibits 14, 15, 16, & 17?

Ans. In the handwriting of Charles E. Putnam.

Int. 249. In whose handwriting are the signatures to those four notes purporting to be those of A. Le Claire & Geo. L. Davenport?

Ans. They are in the handwriting of A. Le Claire & Geo. L. Davenport.

Int. 250. In whose handwriting are those four notes endorsed?

Ans. In the handwriting of J. A. Le Claire.

Int. 251. Was the draft of $4,000, a copy of which is appended
1732 to your deposition as Exhibit 13, renewed at or after its maturity? If so, was it renewed by the same kind of paper or instrument and by the same parties?

Ans. I think it was renewed at maturity, or about that time, by the same kind of paper, and by the same parties.

Int. 252. Can you, upon your personal knowledge, state that the entire arrangement made by your attorney in your behalf, by which you were to be secured or indemnified against the four instruments upon which you were liable for Cook & Sargent, & the two upon which you were liable for Ebenezer Cook, was not made with the firm of Cook & Sargent?

Ans. I think I can.

Int. 253. If the original agreement was made by your attorney for you in your absence, how can you state, from personal knowledge, with whom he made it?

1733 Ans. My personal knowledge is from an interview with Mr. Ebenezer Cook after the agreement was made.

Int. 254. Is your personal knowledge derived from an interview with Ebenezer Cook anything more than information which you received from him?

Ans. It was from information from Mr. Cook.

Int. 255. State, if you know, by whom & for what purpose the two notes endorsed by you and Antoine Le Claire, for Ebenezer Cook, were used.

(Objected to as improper on re-examination, relating to nothing inquired about on cross-examination.)

Ans. I do not know.

Int. 256. Do you not know that one of those notes were deposited with, and discounted by, the firm of Clark, Dodge & Co. for Cook & Sargent?

(Objected to for the same reason as the last preceeding interrogatory.)

1734 Ans. I do not.

Int. 257. Did you learn that such was the case from Cook & Sargent?

(Objected to for the same reasons as int. 255 last above, and also as calling for hearsay.)

Ans. I do not recollect now whether they told me they were discounted for Cook & Sargent, or for Ebenezer Cook.

Int. 258. Were Clark, Dodge & Co. the bankers with whom Cook & Sargent deposited in New York, & upon whom they drew drafts for exchange, sold by them in the year 1859?

(Objected to for the same reasons as int 255, last above.)

Ans. I do not recollect whether they were drawing upon Clark, Dodge & Co. in 1859, or upon the Bank of North America.

Int. 259. Will you please produce before the commissioner the books kept by Cook & Sargent, containing their accounts with Clark, Dodge & Co. in the year 1859?

1735 Ans. I will; & here produce the book containing said accounts.

Int. 260. Will you please turn in that book to said account of Cook & Sargent with Clark, Dodge & Co., and state whether or not the notes

of $5,000, endorsed by yourself & Antoine Le Claire, or either of them, is contained or refered to in that account?

(Objected to as asking the witness to state the contents of a written document which is produced by him in answer to the interrogatory, and which is the best evidence of its own contents.)

Ans. I do not find any such notes in that account.

Int. 261. Please look at said book of Cook & Sargent, & examin their account of bills receivable for the month of September, 1859, & state whether or not, under date of 24th of September, there are not two bills, of $5,000 each, payable by Antoine Le Claire.

(Objected to because the book is the best evidence of its own contents.)

1736 Ans. Under the head of bills receivable, in general ledger B, on page 162, there are the following entres, to wit:

Sept. 24th, 1859. 3319. A. Le Claire $5,000

& oposite, on the credit side, is the following:

Nov. 4. Full $5,000

And below is a similar entry, as follows:

$5,000. Do. 4. Full $5,000

Int. 262. Please examin said books so far as they relate to the accounts of Clark, Dodge & Co. with Cook & Sargent, during the month of September, 1859, and state whether there is any entry therein contained showing a deposit during that month with Clark, Dodge & Co. for Cook & Sargent, which purports to have been made by Ebenezer Cook for the sum of $9,500.

(Objected to for the same reasons as the last preceeding interrogatory.)

Ans. Under the head of Clark, Dodge & Co. there is the following entry on the Dr. side of said account, to wit:

Sept. 7th. To deposite by E. Cook, L. 31 ..... $9,500

Int. 263. Are you accuainted with the manner in which these
1737 books are kept, so as to be able to explain the same?

Ans. I am very little acquainted with double-entry book-keeping.

(On the 11th day of March, 1864, in response to interrogatory 27th, on the direct examination, the said witness produced the ledger, to wit, general ledger B, and depositors' ledger E, containing the accounts called for by that interrogatory.

And now, on this 30th day of March, 1864, the attention of complainant's solicitor is by def'ts' solicitor called to the fact that copies of the said entres have not been called for or attached as exhibits; and defendants' solicitor insists that the same shall be annexed to this deposition as exhibits; and [and] solicitor for the complainant then stated that he declined to annex copies of the accounts from the ledgers as exhibits, for the reason that the said books, when produced, were deposited with the com'r for the purpose of enabling complainant's solicitor to examine said accounts; that the ledgers, within a few days thereafter, were taken from the custoday of the com'r by the wit-
1738 ness, so that complainant's solicitor had not an opportunity to examin the same. And further, that upon inspection of the books produced, they were only the ledger of the deposite account, & a general ledger, not giving the original entries; and thereupon, copies of the

said accounts called for by said int. 27, taken from said books, are, at the request of defendants' solicitors, hereto annexed, marked respectively Exhibits 19, 20, 21, & 22.

And complainants solicitor objects to said exhibits, for the reason that they do not contain the original entries of the transactions, & for the reasons that they are only the written declarations of the defendants in their own behalf.)

Cross-examination resumed.

Cross-int. 83. You say, in answer to the 211th interrogatory, put to you on your re-direct examination, (in which you were asked whether it was not part and parcel of the agreement between the executors & Joseph A. Le Claire, under which the said farm was conveyed to his son,
that if he would give up the money & securities he held the ex-
1739 ecutors would see that his claim was arranged or paid,) as follows: "I do not recollect that there was any other agreement than that, to carry out the agreement between him & Antoine Le Claire to convey Rose Bank farm." And you further answer to int. 213, on said re-direct examination, in which you were asked what, if anything, was to be done with them, (meaning the other claims of Joseph A. Le Claire against the estate,) as follows: "I think they were to be paid; I do not recollect exactly what claims are refered to." Now, please to state whether or not you mean by said answers that it was agreed between the executors & Joseph A. Le Claire, as part of the same agreement under which the said farm was conveyed as aforesaid, that other claims of Joseph A. Le Claire against the estate of A. Le Claire for money should be paid.

(Objected to by complainant as leading, & suggestive of the answers desired; that the witness being a party, is not permitted to explain
answers given on his direct examination by questions of a direct
1740 and leading character.)

Ans. I do not; I mean that there was no other bargain than the bargain for conveying Rose Bank farm at that time.

(All this answer after the word "not" in the first line objected to by complainant as not responsive to the question.)

C. int. 84. What, if anything was agreed upon between the executors and J. A. Le Claire in the agreement under which the said farm was conveyed to his son, in reference to any other claims of his against the estate of A. Le Claire?

(Objected to for the reason that this whole matter has been enquired about on the first cross-examination of this witness, and that he then stated in detail the terms of said agreement, as not a proper cross-examination of the witness, and as immaterial.)

Ans. There was no agreement made in regard to any other claims than the claim to convey Rose Bank farm.

1741 C. int. 85. Will you then state why you answered re-direct int. 213 as you did?

(Objected to on the ground that the question is one in the nature of cross-examination of the witness, who is a party, by his own solicitor.)

Ans. Because I did not understand that question exactly.

C. int. 86. Did you make the arrangment which you have stated as made by you, that you would convey said farm to Joseph A. Le Claire, jr., if the executors would pay the notes or renewals thereof endorsed for Ebenezer Cook in person, or was it made on your behalf by an attorney?

Ans. It was made by me in person.

C. int. 87. Have you in your possession the two notes endorsed by you for Ebenezer Cook, and heretofore refered to in your examination? If so, please produce the same to the examiner, that copies of the
1742 same may be attached to your deposition?

Ans. I have, and here produce them.

(The said notes are attached by copies marked, respectively, Exhibit "H" and Exhibit "I.")

C. int. 88. You state on your direct examination that you thought the two instruments endorsed by you for Ebenezer Cook were notes, & one of those now produced by you in answer to the last interrogatory appears to be a draft; will you please to state whether or not you were mistaken, and whether you had the paper then at hand to refer to when you made your answer on the direct examination.

Ans. I was mistaken; I spoke from recollection, and not having the instruments before me at the time I answered, did not exactly know their nature.

C. int. 89. State, if you know, in whose handwriting are the sig-
1743 natures to the said instrument, and the endorsments thereon, respectively?

Ans. The signatures to the note & draft are in Ebenezer Cook's handwriting, and the endorsments thereon are in the handwriting of Antoine Le Claire & Geo. L. Davenport; i. e., their names are, and the endorsment of Sargent & Dixwell is in the handwriting of Geo. B. Sargent.

C. int. 90. State, if you know, in whose handwriting the body of said instruments is filed up.

Ans. In the handwriting of Ebenezer Cook.

C. int. 91. Have you in your possession any notes or drafts other than such as have been heretofore produced by you, given in renewal of any of the renewals of said two instruments, or either of them, or any part thereof? If so, please produce the same.

Ans. I have, and here produce them.

1744 The further taking of these depositions is here adjourned until to-morrow, March 31st, 1864, at 9 o'clock, a. m.

R. LINDERMAN, *Com'r.*

MARCH 31ST, 1864—9 *o'clock a. m.*

Examination resumed pursuant to adjournment.

The said instruments mentioned in cross-int. 91 & answer thereto are annexed by copies. The two drafts for $4,000 each are marked, respectively, defendants' Exhibit J, & defendants' Exhibit K, and the five notes are marked, respectively, defendants' Exhibits L, M, N, O, & P.

Direct examination resumed.

Re-re-direct int. 1. Was the $1,000 paid by Antoine Le Claire, as stated by you, on one of the instruments on which you & he were liable for Ebenezer Cook paid to apply upon the note or upon the draft?

Ans. I think it was applied upon the note.

1745 Int. 2. At the date of that draft & note, (October 20th, 1859,) had Ebenezer Cook any other office or place of business than the banking-house of Cook & Sargent?

Ans. I am unable to say whether he had any other office or not. I think he was connected with the railroad company; but whether he had any other office or not, I don't know.

Int. 3. Was he at that time engaged in any other kind or branch of business, to your knowledge, than that in which he was engaged as a member of the firm of Cook & Sargent? If so, state what.

Ans. He had some connection with the M. & M. railroad, I think, as vice-president or manager.

Int. 4. If in any other than that, state it.

Ans. He was also a director in the Merchants' Branch of the State Bank at Davenport; that is all that I know of.

GEO. L. DAVENPORT.

1746 Rec'd of James May, complainant, $27 00, as witness fees in the foregoing examination.

GEO. L. DAVENPORT.

I, Rufus Linderman, commissioner as aforesaid, do hereby certify that George L. Davenport and Louis C. Dessaint, defendants and witnesses in the above-entitled cause, residing at the city of Davenport, in the county of Scott, [in the county of Scott,] and State of Iowa, were produced before me at my office in said city, and each of them by me sworn to testify the whole truth and nothing but the truth in answer to the interrogatories propounded to them; that the interrogatories and answers thereto were reduced to writing by me, and the whole examination of each of said witnesses was read over to them respectively by me, and by said witnesses, and each of them respectively subscribed in my presence.

Given and certified this 1st day of April, A. D. 1864.

RUFUS LINDERMAN,
Commissioner.

Commissioner's fees, $216, paid by complainant.

R. LINDERMAN, *Com'rs.*

A true copy of the certificate of the commissioner to the above two depositions.

W. G. WOODWARD,
Clerk of C. C. U. S., Iowa.

1747 UNITED STATES OF AMERICA, *ss:*

To Marguerite Leclaire & George L. Davenport, executors of the last will of Antoine Leclaire, dec'd, & Marguerite Leclaire, George L. Davenport, Louis C. Dessaint, John P. Cook, Ebenezer Cook, George B. Sargent, Marguerite Leclaire, Francis Leclaire, sr., Francis Leclaire, jr., Eulalie Leclaire, Antoine Leclaire, Henry Leclaire, Joseph Leclaire, David A. Leclaire, Antoine James Leclaire, Etienne Bienvenue, Stephen Bienvenue, Adaline Hebert, Leon La Parche, Ellen La Parche, Jerome La Parche, Francis Hebert, Marguerite Laucere, John Laucere, William Laucere, Etienne Laucere, Antoine Laucere, and David Napoleon Leclaire, George Leclaire, Antoinette Leclaire, Mary Leclaire, & Louis Leclaire, infants, who appear by Gibson Brown, guardian ad litem, greeting:

You are hereby cited & admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to an appeal allowed & filed in the clerk's office of the U. S. circuit court for the district of Iowa,
1748 wherein James May, complainant, is appellant, and you are re-

spondents, to shew cause, if any there be, why the decree in said case should not be reversed & corrected, & speedy justice done to the parties in that behalf.

Witness the Hon. James M. Love, one of the justices of the circuit court of the United States for Iowa, this the 5th day of June, A. D. 1868.

J. M. LOVE,
Judge, in open Court.

1749 This notice came into my hands for service on the 9th day of June, A. D. 1868, and I served it the same day on J. N. Rogers, of the firm of Putnam & Rogers, att'ys, by reading to him and delivering to him a copy; and on the 10th day of June, 1868, I served it on the within-named Gibson Brown, by reading to him and delivering to him a copy, in the city of Des Moines, Iowa.

J. W. CLARK,
U. S. Marshal for the Dist. of Iowa.

Marshal's fees.

Service on 2	$4 00
Mileage	12
	$4 12

Paid by James May.

(Indorsed:) Citation in equity case. James May vs. M. Leclaire & G. L. Davenport, ex'rs of last will of A. Leclaire, dec'd, et al.

(Indorsement on cover:) No. 262. James May, appellant, vs. Marguriete Le Claire and George L. Davenport, executors of Antoine Le Claire, deceased, et al. Iowa C. C. U. S.
Filed 30th September, 1869.

IN THE

Supreme Court of the United States.

[redacted] Term, 1809.

JAMES MAY, APPELLANT,

vs.

[redacted] ANTOINE LE CLAIRE,
[redacted] AND OTHERS.

Appellant's Brief.

JAMES M. ELWOOD,
JEREMIAH S. BLACK,
JOHN A. WILSE,
Counsel for Complainant.

IN THE

Supreme Court of the United States.

No. 262.—December Term, 1869.

JAMES MAY, APPELLANT,

vs.

THE EXECUTORS OF ANTOINE LE CLAIRE, DECEASED, AND OTHERS.

Appellant's Brief.

This is an appeal from the final decree of the Circuit Court of the United States for the District of Iowa, *dismissing* the bill of complaint, &c., on the grounds that "the same are *not sustained by the evidence*, and that the *equities of the cause are with the respondents*.—(See Printed Record, p. 303, 304.)

No opinion was filed in the case, and judgment was entered, apparently, without any examination of the facts of the case.

The complainant's cause of action will be found stated in his original bill (ib., p. 7–21.); in his amended bill (ib., p. 35–39); and in the whole, as a bill of revivor, against the executors and heirs of Antoine Le Claire, one of the original defendants, after his death.—(Ib., p. 39, 5.)

The evidence in the case shows the following leading undisputed and undisputable facts, viz:

1st. That James May and Antoine Le Claire had, previously to February 4, 1859, been associated in business,

and that they then had mutual claims against each other.—(Printed Record, p. 396.)

2d. That at that date James May made Antoine Le Claire a written offer of compromise, which, on the 8th of March, 1859, was accepted by Le Claire, in writing, which acceptance was witnessed by his attorney and counsel, John P. Cook.—(Printed Record, p. 8 and 9, ib., 79.)

3d. That this compromise consisted in a settlement and cancellation of their mutual claims by an exchange of property *of unequal values*, whereby May was to be paid his claim against Le Claire by the difference in value between the property which he was to give and the value of the property which he was to receive—that difference being, according to various estimates of value, from $26,000 to $28,000.

4th. That in part performance of the contract on his part, May gave to Le Claire immediate possession of the farm, through his nephew and business agent, Jos. A. Le Claire, and also executed and deposited with Cook and Sargent, bankers at Davenport, a deed, conveying said farm to Le Claire.—(See allegations of bill and the admissions of John P. Cook, Printed Record, pp. 12, 44, 45, 54, 362, 420.)

5th. That in part performance of the contract on his part, Antoine Le Claire also assigned to James May the notes, mortgage, and collaterals of Adrian H. Davenport, and deposited them with Cook and Sargent, as appears by the assignment endorsed on the mortgage, and by the receipt of Cook and Sargent for the same.—(Ib., pp. 24–25, 54, 92, 93.)

This assignment is declared to be "*in consideration of an amicable* and *full settlement between said May and myself of all matters of difference heretofore existing between us.*" This assignment is witnessed by John P. Cook, the attorney and counsel of Le Claire, and the endorsement of the notes, made at the same time, is also proved to be in his handwriting.—(Ib., pp. 24, 92–93, 100, 398, 110–111.)

6th. That Antoine Le Claire, at the time and for a short time afterwards, was satisfied with the compromise (Printed Record, p. 396); but that he afterwards became dissatisfied.—(Ib., pp. 452–'3.)

7th. That in the meantime, to wit, April 12, 1859, Adrian H. Davenport offered to compromise with James May by giving him, at an estimated value of $40,000, *part* of the liabilities of the said Davenport, which had already been assigned by Le Claire to May.—(Ib., p. 81.) This offer was not accepted.

8th. That James May, in further execution of the contract on his part, entered into negotiations at Pittsburg by which he was to obtain $15,000 to enable him to remove the encumbrances upon the Rose Bank farm, consisting of a mortgage, deed of trust, and some judgments—an amount fully sufficient to satisfy all the incumbrances existing at the date of the compromise, or acquired within one year from that date.—(Printed Record, p. 111; Exhibit D, p. 107; Exhibit N, pp. 359, 360; Ans. 8, pp. 75–76.)

9th. That, notwithstanding May's efforts to prevent it, the Rose Bank farm was advertised for sale under the deed of trust, and sold on the 20th of July, 1859, to Dessaint, and conveyed to him by Powers, the trustee.—(Printed Record, pp. 27, 118–120.)

10th. That, although Antoine Le Claire was already in possession of the farm under the deed of conveyance made to him by James May, and was aware of the intended sale, he made no efforts to prevent it, and rendered no assistance in aid of the negotiations by which the sale could have been prevented, or by which the property, after the sale, could have been transferred to him, free of all incumbrances and in full execution of May's contract with him. This is stating the fact in the mildest form.

11th. That, notwithstanding May's failure to satisfy and discharge the incumbrances resting upon the title to the Rose Bank farm conveyed by him to Le Claire, within

a year from the date of the compromise, the said farm is now held by Jos. A. Le Claire, jr., by a free and unencumbered title, as the *assignee* of Antoine Le Claire, supposing the trustee's sale to be valid.

This has been acccomplished by a circle of conveyances: 1st, from Dessaint and wife to Ebenezer Cook, by deed dated July 27, 1859.—(Printed Record, p. 116–117.) 2d, from Ebenezer Cook and wife to Geo. L. Davenport, by deed dated December 16, 1859.—(Ib., p. 117–118.) 3d, from Geo L. Davenport and wife to Jos. A. Le Claire, jr., by deed dated January 20, 1862, (ib., p. 128,) made in pursuance of a written contract of Antoine Le Claire with his nephew, Jos. A. Le Claire, dated November 21, 1860, (ib., p. 225–6,) and in consideration of the payment, by the estate of Antoine Le Claire, of two notes of E. Cook for $10,000, the payment of which was assumed, or alleged to have been assumed, by Geo. L. Davenport.—(Ib., p. 583; see also ib., p. 568-9, 581, 582, 583, 584–5, 604, 605, 606, 607, 609)

This completes one circle of operations.

12th. That, on the other hand, Antoine Le Claire, on the 9th day of March, 1860, notified James May that he was ready to comply with the contract on his part, and called upon James May to comply with the contract on his part.—(See notice, ib., p. 78–80.) That, shortly thereafter, to wit, on the 27th day of March, 1860, the said Le Claire entered into a written contract with Adrian H. Davenport, by which it was agreed that Le Claire should resume title and possession of the property sold and conveyed by the said Le Claire to the said Davenport; that the notes given by him should be canceled and he discharged from liability, and that, as a means to this end, Le Claire should proceed to foreclose his mortgage and buy in the property at the sale under the mortgage.—(See contract, ib., p. 107–108, witnessed by the same John P. Cook.) That, accordingly, in April, 1860, proceedings to foreclose the said mortgage were insti-

tuted by the said John P. Cook, of the firm of Cook & Drury.—(See record of proceedings, ib., pp. 147, 168.) That, to facilitate the proceedings, Davenport admitted the allegations of the bill, and a decree *pro confesso* was entered against him, and subsequently liquidated at the sum of $41,708.32.—(Ib., pp. 158, 163–164.) All this was done without notice to May. And that, under this decree, the mortgaged property was subsequently sold and conveyed by the sheriff to the said Antoine Le Claire for the sum of $20,000.—(Ib., pp. 165, &c., 168, 463–466.)

This completes the other circle of operations.

There are other important facts in the case, to be noticed hereafter, but these are all that are necessary in order to give an outline view of the case, and show the respective relations and attitude of the parties to this controversy.

It will be observed that, by the joint effect of two parallel series of operations, Antoine Le Claire and his estate have become possessed of both of the equivalents agreed to be exchanged between James May and Antoine Le Claire by the compromise of March 8, 1859, in payment of the admitted indebtedness from Le Claire to May:—

Antoine Le Claire has paid his debt to James May in full; he, or his assignee, holds the Rose Bank farm by a free and unencumbered title; he still holds the island and river-shore property; and has got back all the Adrian H. Davenport property, which he agreed to convey, and did convey, to James May.

James May, on the contrary, has nothing—literally nothing—as the result of the whole operation, except this suit in chancery!

Now, all this is not purely accidental. It indicates *contrivance and design.* Each part is so connected with the whole and the whole with each part, that, taken together, they furnish internal evidence, to the most ordinary comprehension, that the result was contemplated from the

beginning, that this scheme was devised as "a new way to pay old debts." That after the compromise had been made in good faith and partially executed by both parties, the plan to break it up was conceived as an *afterthought* in the brain of an unscrupulous lawyer and executed under his direction by a knavish client and his confederates, as a showman plays with his puppets.

Accordingly we contend—

I. That James May was prevented from extinguishing the incumbrances on the Rose Bank farm by the fraudulent interference and procurement of Antoine Le Claire and his confederates.

But granting that there was no fraud, and that the result which we have seen was nothing but "a fortuitous concurrence of circumstances;" we contend—

II. That the sale under the deed of trust, as conducted, was illegal and void, and ought to be set aside, in aid of a specific performance of the contract between May and Le Claire.

But, waiving the questions of *fraud* and of the *illegality* of the sale, we contend—

III. That, inasmuch as *time* was not of the essence of the contract on the part of James May to extinguish the incumbrances on the Rose Bank farm; as he was guilty of no *negligence* in his efforts to comply with his contract, and as those incumbrances have already been extinguished by Antoine Le Claire; and inasmuch as the said property is now held by his assignee as the property of Antoine Le Claire, by a clear and unincumbered title, the estate of Antoine Le Claire should be decreed to convey to James May the property agreed to be conveyed to him by the compromise agreement of March 8, 1859, or its proceeds, where it cannot equitably be conveyed—deducting therefrom the value of the said Rose Bank farm or the amount justly expended by Antoine Le Claire or his estate, in extinguishing the said incumbrances; or in such other way as,

in the judgment of the court, will do full and complete justice between the parties.

ARGUMENT.

I.

The question of fraud.

This is a question of *law*, as well as of *fact*.

1st. As a question of *law*.

Courts of equity will presume fraud from the nature of the transaction and the relation of the parties.

Story's Eq. Jurisp., § 190.

4 Cowen Rep., 207, Jackson vs. King.

2 Greene's Rep., 77, Arnold vs. Grimes.

1. What constitutes fraud in equity?

Story's Eq. Jurisp., § 187.

2. Meaning of the rule that fraud in equity will be presumed.

How is fraud to be established?

Not by open acts and declarations.

Concealment and *secrecy* are the ingredients of the crime, *not* open *declarations* and overt acts.

It is clear, therefore, that fraud must be established by *facts and circumstances.*

18 Wend., 353, Waterbury vs. Sturtevant.

1 Story's Eq. Jurisp., § 190.

What effect is to be given to the denials in the answers?

See 9 Cranch Rep., 153, Clark's Ex'rs. vs. Van Remsdyk.

2 Barb. S. C. Rep., 196, Wight vs. Prescott.

18 Wend. Rep., 353, Waterbury vs. Sturtevant.

These cases, we understand, settle the rule to be that the positive denials of the answers *may be overcome* and outweighed by the *circumstances showing fraud.*

A significant fact throughout is, that Le Claire did not

answer or deny under oath any of the allegations of the bill. It may be said that he died before any of the answers were filed. Nevertheless the fact remains that he did not answer, and that no answers were filed until after his death.

The allegations of complainant's bill on this point, when taken together, amount simply to averments that the defendants, by their conduct, procured and effected a sale of Rose Bank farm with the view of preventing a compliance, on the part of complainant, with the terms of his contract with Le Claire; and that under this cloak and cover, it was transferred to Le Claire, or to his assignee.

Now, what is sufficient proof of these allegations? Is the complainant bound to prove them *literally* and specifically, as alleged? We say not.

1. All that is required of complainant is to prove *substantially* the averments in his bill.

5 Barbour S. C. Rep., 533, Brice vs. Brice.

2. We affirm it to be the true meaning of the maxim that the complainant must have relief, if at all, "*secundum allegata et probata*," that the evidence must sustain the general allegations of his bill.

3. Even though the bill in this case charges that there was a *conspiracy and combination* to effect a certain purpose, and that it was effected by the fraudulent conduct of the defendants, yet the substantial allegation of the bill being that Le Claire and the other defendants by their conduct rendered the performance of the contract impossible, we are entitled to a decree against Le Claire certainly, if not against the other defendants, even though the evidence does not disclose a case of fraud.

5 Barb. S. C. Rep., 533, Brice vs. Brice.

2. Fraud as a question of *fact*.

We now proceed to discuss the question of fraud as disclosed by the evidence in the case.

First. The relations subsisting between the parties.

1. Powers, and Cook and Sargent were bankers at Davenport. Powers was in the habit of borrowing money from Cook and Sargent, was under obligations to them pecuniarly, and, *ex necessitate*, subject to their control.

Ans. of Jno. P. Cook, Printed Record, p. 51.

One of the objects of Cook was, to get by the sale, the money which Powers owed Cook and Sargent.

2. Jos. A. Le Claire was the nephew and business agent of *Antoine Le Claire*—occupied the same office with him—and was in the actual occupation of Rose Bank, after the agreement of May and Le Claire, under the permission of Antoine Le Claire. He received the rents of the same, and is now virtually the owner of Rose Bank.

Evidence of J. A. Le Claire, Printed Record, pp. 414, 419, 420, 425–6.

G. L. Davenport, ib., pp. 540, 541, 566.

John T. King, ib., p. 362, ans. 5.

3. The defendants, John P. Cook and Eb. Cook are brothers, both members of the firm of Cook & Sargent—parties in business—occupying the same office; and John P. Cook was the attorney of Antoine Le Claire.

Answer of John P. Cook, Printed Record, pp. 45, 46; Evidence, ib., pp. 100, 330, 343, 353, 355, 375–6, 383, 349, 389, 392, 394, 495–6.

4. Geo. L. Davenport and Antoine Le Claire were intimate in their business relations, were endorsers for each other, and both of them endorsers for Cook and Sargent to a considerable amount, and also endorsers for Eb. Cook.

Printed Record, pp. 523, 543, 580, 581, 595, 561, 563, 564.

5. The defendant, Dessaint, was an intimate friend of Le Claire, and in the habit of lending him money.

Printed Record, p. 517, answer.

6. Eb. Cook, A. Le Claire, G. L. Davenport, and S.

Dessaint were associated in business as stockholders and directors of the State Bank.

Printed Record, pp. 493, 523, 524, 537–8.

7. Geo. L. Davenport was one of the assignees of Cook and Sargent, and one of the executors of Antoine Le Claire.

Printed Record, pp. 23, 525, 168, 40, 575.

These parties are so related that if either of them desired to effect an object like that charged in the bill, he would select the other defendants as his confederates. *He would not select strangers.*

Second. While there is some evidence of the acts of Antoine Le Claire to charge him personally and directly with the fraud, yet the greater portion of the fraud on his part was perpetrated *by his attorneys* and *agents* in the transaction.

1. John P. Cook was the agent and attorney of Le Claire.

1. The admission in answer of Cook.

Vid. bill, Printed Record, p. 14, and *ans. of Cook*, ib., p. 46.

2. John P. Cook was selected by Le Claire as the custodian of the papers relating to the matter in controversy.

Answer of John P. Cook, Printed Record, pp. 45, 48, 54, 349, 389.

3. John P. Cook was the subscribing witness to the compromise agreement, March 8, 1859, and to the assignment to James May, dated March 10, 1859.

Printed Record, pp. 9, 80, 81, 24, 353.

4. John P. Cook drew and dated the agreement March 27, 1860, between Antoine Le Claire and Adrian H. Davenport, in regard to the Davenport mortgage.

1. Answer of Adrian H. Davenport to direct int. 42, Printed Record, pp. 392, 397, 398, 354, 355.

5. John P. Cook was one of the attorneys who, on the

24th day of April, 1860, commenced the action for Le Claire to foreclose the Davenport mortgage and procured the decree.

See the papers in evidence, Printed Record, pp. 149, 162. First draft of decree is in his handwriting, in pencil.

6. John P. Cook, as attorney, *held the collaterals* until after Le Claire's death and delivered them to the executor.

1. The answers of Geo. L. Davenport to interrog. 107 to 114, 117, 118, 119, Printed Record, pp. 533, 534.

7. John P. Cook was the attorney of Le Claire, and as such attended the sale of the mortgaged property under the decree in favor of Antoine Le Claire vs. A. H. Davenport, and after Jo. Le Claire bid off the property, he directed the deed to be made to Antoine Le Claire.

1. Ans. of J. Thorington to direct int. 12, 13, 15; cross do. 2; Re. Ex. 3, 4, 5, Printed Record, pp. 464, 466.

8. Antoine Le Claire referred A. H. Davenport to Cook as his attorney in this very transaction.

1. Ans. of A. H. Davenport to direct int. 20, 21, 24, 25, 26, 28, Printed Record, pp. 389, 390.

9. John P. Cook's own repeated declarations that he was attorned for Le C.

1. His statements to Powers; Ans. to 9th direct int. 10, Printed Record, p. 325.
2. Ans. of George H. Parker to D. int. 42, 46, 48, Printed Record, p. 376.

And yet, with all this evidence that John P. Cook was acting for Le Claire, we are coolly told there is no evidence, except his declarations, that he was the agent and attorney of Le Claire. On the contrary he is shown to have been the agent and attorney of Antoine Le Claire, not only *before*, but *during* and *after* the transactions in question, and he is proved to have been the *prime mover* in them all.

10. Jos. A. Le Claire was the general business agent of Antoine Le Claire.

1. Answer of R. D. Congdon to int. 61, Printed Record, p. 387.
2. Ans. of J. A. LeClaire to D. int. 7, ib., p. 414.
3. Other evidence; *Davenport's* answer to 190 to 191, ib., p. 540–541.

We believe it to be established, then, by the evidence referred to, that John P. Cook was an agent and attorney of Le Claire in the transaction pertaining to the sale and the matters connected therewith; and that J. A. Le Claire was the general agent of Antoine Le Claire; *and if they were, then their acts and declarations in the transaction bind Le Claire.* They became in law his acts. Notice to them was notice to Le Claire.

9 Johns. Rep., 162.

Starting, then, with this proposition, and asking the court to remember that we are not confined to the acts and declarations of the parties before the sale, in order to establish the frauds charged, but may refer to all their acts *since*, to show that their conduct was controlled by the desire to cloak this property for Le Claire, we proceed to refer to some of the facts which, we suggest, furnish conclusive evidence of fraud.

Third. When the agreement was first made, Le Claire and Cook were both satisfied—Cook was a witness to, and drew several of the papers as his attorney and adviser at the time. But after the agreement was entered into between May and Le Claire, John P. Cook, we insist, for some reason changed his mind and induced Le Claire to believe that the agreement was not fair, and set to work to defeat its performance.

1. The declaration of Antoine Le Claire to A. H. Davenport, Printed Record, p. 396, shows his satisfaction with the compromise.
2. Ans. of Charles Powers to int. 53 to 55; also *int.* 9, Printed Record, pp. 330, 325.

3. The answer of R. D. Congdon to direct int. 14, 15, 16, 23, 24, ib., pp. 382, 383, show the change and determination to defeat it.
4. Other evidence. *Answer of Jos. A. Le Claire* to cross int. 28, ib., pp. 452, 453. Ans. of John P. Cook, ib., pp. 43, 44.

We think this evidence, taken in connection with the subsequent conduct of *Jno. P. Cook*, shows must conclusively a determination to defeat and embarrass May in the performance of his contract.

Fourth. The steps taken by John P. Cook, and the circumstances to effect his object.

1. He undertook to prevent bidders at the sale.

Answer of Charles Powers to int. 7, Printed Record, p. 325.

2. Answer of R. D. Congdon to int. 38, 40, 41, 42, 43, ib., 384, 385.
3. Answer of L. C. Dessaint to int. 43, ib., p. 477; 265, ib., p. 494. *Cross-int.* 11, ib., p. 501; int. 88, ib., pp. 516, 517.
4. They did succeed in deterring bidders. Who *were present?* His friends. Their relations with Le Claire. Answer of R. D. Congdon to int. 57, 58, ib., p. 387. Ans. of Powers, int. 22, ib., p. 326.
5. Dessaint made an agreement to pay the whole amount of the deed of trust, ib., 501. John P. Cook's admission, ib., p. 47.

The object of this was to sell the property and hold May still liable for all besides the sum of $5,000.—(Printed Record, p. 516, ans. 88.)

Fifth. The conduct and connection of Cook and Powers in relation to the sale.

1. See allegations of bill, Printed Record, p. 14, 15.
2. Now, we affirm that on the day of the sale, as shown by the evidence, May had in his possession and under his control sufficient means to pay the

trust deed and mortgage incumbrances. The amount due on both was only $10,500.

And May had at his command $11,000 *to* $15,000.

Answer of John Audoc to int. 4 and 8, Printed Record, pp. 359, 360.

Answer of King to int. 6, ib., pp. 362, 364.

Two letters of Powers, ib., pp. 111, 107.

Answer of Powers to int. 71, ib., p. 332.

May was prevented from paying the money and thereby avoiding a sale, by the fraudulent conduct of Cook and Powers.

1. Cook, on the day of sale, wrote Powers a note advising him not to take "doubtful drafts" in payment of the claim against May.

Answer of Powers to int. 60, 61, 62, to 71; Printed Record, p. 331–332.

Answer of King to int. 6, ib., p. 363.

2. At this time May and Gallagher, with King, were in Powers' office for the purpose of paying the money.

1. Answer of Powers to int., 67, 68, 69, ib., p. 331–332.
2. Answer of John T. King to int. 6; ib., p. 363–364.

3. On the receipt of the letter from Cook, while May and Gallagher were in his office, Powers, with the view of deceiving May, falsely stated to him that he had *other* sales to make at the court-house before three o'clock, and withdrew from the interview, leaving May under the impression that no sale was to be made, and went and sold the property.

1. Answer of J. T. King to int. 6; ib., p. 363–364.
2. Answer of Congdon to int. 69; ib., p. 399.
3. Answer of Dessaint to 320–321; ib., p. 498–499.

4. Cook and Powers went, on the day of the sale, to the court-house together.

1. Answer of Powers to int. 66; Printed Record, p. 331.
2. Answer of Cook, ib., p. 50.

5. Before King could go and get the drafts and return he sold the property.

1. King's answer to int. 7; ib., p. 365.

We pass now to the consideration of the *circumstances* showing fraud; and we affirm that the circumstances attending the sale and the respective conveyances to Dessaint, Cook, and Davenport were mere cloaks to cover up the real design of the parties, and to hold the property for the benefit of Ant. Le Claire.

6. The conveyance to Dessaint.

He was a tool in the hands of Cook, and really knew nothing about the terms on which he bid off the farm.

1. He had heard that May had sold the farm to Le Claire.

2. He did not know at the time what obligations his bid imposed.

Answer of Dessaint to int. 25 to 74; Printed Record, 475–480. To redirect, ib., 509, &c. Int. 34 to 58, 59, 67. Second re-examination, 6 to 16; ib., 521–522.

3. He bought it for the purpose of keeping and *improving* it.

Answer of Dessaint to int. 204 to 207; ib., p. 489–490. Cross-int. 17–32; ib., 502–504.

4. He sold it within a week.

5. The reasons why.

Answer of Dessaint to cross-int. 33, 34; ib., 504. Contra, p. 403, 415. Real reason, he became scared, ib., p. 396–7; p. 515–516.

6. Had made no examination and knew nothing about its condition when he bought it.

Answer of Dessaint to re-ex. int. 54, 55; ib., p. 511; also, to 75 to 82; ib , p. 514–515.

7. Payment for same by check.

Answer of Dessaint to int. 72 to 82; ib., p. 480; also, 112 to 130; ib., p. 483–485.

8. He never received note or took assignment of deed of trust.

Answer of Dessaint to 193 to 203; ib., p. 489.

He never had or assumed the possession, and it seems *he did not expect to procure possession until the end of the year.* Why not? The trust deed under which the sale was made was prior in date to the title under which possession was held.

Sixth. After the sale the defendants in the combination did everything they could to prevent May from getting the property back, and from redeeming the incumbrances.

1. Dessaint himself refused to give up his bid and let May have the property, *before he had paid the amount of his bid.*

1. Answer of King to int. 8, Printed Record, p. 366.
2. Answer of L. C. Dessaint to int. 278 to 288; ib., p. 495–496.
3. Answer of Powers to int. 37; ib., p. 328.

2. Cook refused to do anything or to make any arrangement by which the sale could be set aside, and, in fact, did what he could to prevent it.

1. Answer of King to int. 6 and 8, Printed Record, p. 364, 366.
2. Answer of Parker to int. 48; ib., 376.

Now, we submit, without going more fully into the testimony, that the allegations in the bill, that there was a combination to bring about the sale under the deed of trust, and that they effected it by the frauds, are fully sustained; and we dismiss this *direct* evidence on the subject, with the remark, *that Antoine Le Claire had full notice of the sale and transactions.*

1. Jo. Le Claire, as has been shown, was his business agent in above.

2. He had full notice.

1. Answer of J. A. Le Claire to int. 392, to int. 405, Printed Record, p. 446–447.

3. Cook was acting in the premises for Le Claire, and his acts are Le Claire's.

4. Le Claire himself, within six days after the sale, signed a note with Eb. Cook as sureties for John P. Cook on a purchase of this Kettell mortgage.—(Ib., p. 329.)

Admission of Jno. P. Cook, ib., p. 51.

Seventh. Sale, conveyance, and consideration to Eb. Cook—Payment, how made—Quit claim deed.

Assignment of Kettell mortgage. Printed Record, p. 485, 500, 396.

1. The farm sold subject to the mortgage.

2. Jno. P. Cook purchased the mortgage.—(Ib., p. 51.)

3. Commenced suit on it against May. Judgment, 24th December, 1859.

4. Judgment assigned by Eb. Cook to Davenport, 27th December, 1859.—(Ib., p. 528; ans. 58, ib., p. 587–8.)

Eighth. Conveyance by Eb. Cook to defendant, Davenport, of Rose Bank.—(Printed Record, pp. 117, 555, 528, 557, 565, 592.)

Consideration.

I. Davenport, in his answer, avers that the consideration of the conveyance was the assumption and payment by him of the notes endorsed by him for Eb. Cook, and the transfer of the judgment on the note secured by the Kettell mortgage.

This allegation is not only not supported by the evidence, but is, as we aver, directly and positively shown to be untrue.

1. Davenport did not assume the payment of these notes, or, if he did, he did not pay them.

1. Deposition of Davenport, ans. to interrogatories,

158 to 165, re-ex., Printed Record, p. 602–603; also, re-cross-ex., 87, 88, 91, and exhibits referred to; ib., p. 614, p. 223–224.

2. Re-examination, int. 222 to 230; Exhibits, ib., pp. 608, 609, 215, &c.; 240 to 251, ib., p. 610.

3. Re-ex., int. 1, ib., p. 614.

4. The whole amount, $9,565, was still due at the time of the agreement to convey the same to J. A. Le Claire, jr.

Davenport, Ans. to int., 447 to 494; ib., p. 566–571.
Cross-Ex., 70 to 77; ib., p. 584–'5
Re-ex., 167 to 221; ib., p. 603–608.

II.—Other Facts.

1. The over draft of $999.72.
Davenport, int. 511 to 520; ib., p. 573.
Also, 387–435; ib., p. 560 & 564–5.
Cross int., 80; ib., p. 585.
Copy Inventory, ib., p. 169.
Sold for 10 *cents*, ib., p. 191.

2. The judgment assigned to Davenport against May. (Included in the list of assets of Cook & S., as a claim against Davenport.)

3. The Cannon & French mill property.
1 Re-ex. of Geo. L. Davenport. Re-ex. 135 to 137, ib., p. 599–600, p. 175.

4. The assumption by Davenport of notes for Cook & S. to the amount of $20,000, and conveyance to him for $14,000, and a large amount of notes $35,000. Ib., p. 561.

5. The *conveyance* to Le Claire by Cook & Sargent. Mortgage. List of Lands. *Deed. Johnson & Co.*

6. Davenport paid no attention to the matters of settlement between him and Cook & S.
Verbal and *Written* agreement.
Davenport re-ex., 130–155–6–7; ib., p. 599–602.

Agreement was made by his attorney, Putnam, who was also attorney for Le Claire, &c.

Re-ex., 131 p. 599. Read, 165–6–7; ib., p. 603.

No interest in it.

Davenport, int. 172 to 18; ib., p. 539–540.

Rent of it for 1861 and '2, collected by J. A. Le Claire.

Wilson's ans. to 27–8–9; ib., p. 347, 403–4.

Antoine Le Claire's connection with the transaction, and his acts.

1. After the sale under trust deed, with the knowledge that the premises had been sold, *subject* to the Kettell mortgage, he endorsed a note for his attorney, John P. Cook, with which to put that mortgage in the hands and under the control of said Cook.

Printed Record, p. 51. Cook's admission.

Effect, to embarrass May.

2. On the 21st November, 1860, Ant. Le Claire signed the written agreement with J. A. Le Claire, to convey to him the farm.

Vide agreement. Printed Record, p. 225, 583–4.

At this time, Ant. Le Claire, so far as the evidence discloses, had never passed one word with Davenport in regard to the conveyance of the property.

Fact. Antoine Le Claire was treating it then as his own.

GEO. L. DAVENPORT'S ans. to cross-int. 62 from 58. Printed Record, p. 583.

Made *verbal* agreement with Le Claire, which was void and never executed.

——Cross-ex. 63 to 69; ib., p, 583.

——Re-ex. 103, 104, 105, 595–6.

3. His conduct after 8th March, 1860:

1. Notice on the 9th of March, 1860.

Printed Record, p. 78–80.

2. Agreement between him and Davenport, March 27, 1860, with A. H. Davenport.

Ib., p. 108, 149, 158, 161.

Terms of the agreement.

3. Foreclosure of mortgage commenced April 24, 1860.—Ib., p. 147–149.

4. Premises purchased by J. A. Le Claire, and deed to Ant. Le Claire.—Ib., p. 464, &c.

All done with the view to complicate and embarrass May.

We have only referred to a few, comparatively, of the acts and circumstances to establish the fraud.

They prove conclusively the allegations in the bill.

The only other proposition in this connection to which we deem it important to refer is, in regard to the competency of the declarations of Powers.

We insist that Powers' declarations, while he held the title under the deed of trust, his acts in foreclosing the deed, and in and about the sale, and his statements before the sale showing the contemplated *fraud* and *its commission* are competent to charge the persons claiming under him as part of the res gestæ.

1 Greanleaf Evidence, § 109, § 180, § 189, § 191.

4 John's Rep., 230, Jackson vs. Bard, and Note.

1 Comstock's Rep., 525, Petts vs. Wildes.

10 Paige's Chan., Rep., 170, Padget vs. Lawrence.

14 Wend. Rep., 619, Corbin vs. Gurnsey.

6 Paige's Chan., Rep., 323, Varick vs. Briggs.

The doctrine that parol declarations are not admissible to *divest* a legal title, is not applicable when offered to show *that no title vested.*

11 Wend. Rep., 535, Jackson vs. Myers.

7 Wend. Rep., 141, Jackson vs. Livingston.

2. A combination for an illegal purpose having been established by the evidence, the declaration of Powers

while engaged *in the conspiracy* are competent against *all* the parties thereto.

1 Greenleaf Evidence, § 111.
12 Wend. Rep., 41, Crary vs. Sprague.
18 Wend. Rep., 353, Waterbury vs. Sturtevant.
2 Peters' Rep., 362, Am. Fire Co. vs. U. S.

II.

We pass now to notice the proposition, that, as against Antoine Le Claire, *independent of any fraud*, the complainant is entitled to a decree under the allegations in his bill, and we affrm—

I.—That the trustee, (Powers,) by his sale under the trust deed, did *not* execute the power or pass any title to Dessaint. That May's title was *not* divested by the sale. The sale was utterly void.

1. The deed of trust expressly provided that in case of sale the land should be sold by the trustee in *parcels*. It invested the trustee with a discretion as to the *size of the parcels*, but absolutely required him *to sell in tracts or parcels*.

2. In execution of the deed of trust the trustee did *not*, in his notice of sale, *advertise the land to be sold in parcels*. He advertised to sell it in a *body*. The failure and omission of the trustee to notify the public that the farm would be sold in *parcels*, was clearly a breach of duty. While we do not insist that this omission would necessarily vitiate the sale in the hands of a *bona fide purchaser* for value, we do claim, that as to Dessaint, *under the circumstances*, it was such a non-observance of the conditions of the trust as would affect *him*. May, by his deed, required the land to be sold in tracts or parcels, and he required four weeks notice of *the* sale to be published. This means that the trustee should give notice of *just such a sale as he was authorized to make under the deed of trust*, to wit, that the land would be sold *in parcels*. This omission the court

can readily see may have operated to the prejudice of May.

3. The trustee did *not* sell the farm in parcels. As to this there is no dispute. His proposal at the sale, that if any one wanted to bid for any part or portion of the farm less than the whole, he *would* offer such portion as a separate tract or parcel, was clearly *not* a compliance with the requirement to sell in parcels.

4. May being the owner of the "farm," and by his trust deed consenting to a sale thereof, had the right to prescribe the terms and conditions on which the same might be sold in case of his default. He did, for his own safety and security, provide that the same should be sold *in tracts or parcels*. The trustee had no authority to sell it in any *other* manner. The *condition* that the land should be sold in parcels must be observed by the trustee in order to give any validity whatever to his acts in the premises. It was, so to speak, a limitation on the trust power —a prohibition to the trustee to sell in any *other* mode. It was a power (the power of sale) *which could only be exercised in the mode, and subject to the conditions prescribed by the instrument creating the power.*

Hill on Trustees, (marg.,) p. 478.
2 Washburn on Real Property, p. 317.
4 Kent's Com., (marg.,) pp. 330 to 334.
2 Parsons on Cont., p. 421.
2 East's Rep., p. 204, Harkins vs. Butler.
1 Peters' U. S. Rep., p. 138, Greenleaf vs. Queen.

Under these authorities it it clear that the omission and failure of the trustee to sell in parcels amounted to a *non*-execution of the power. He could not, in the nature of things, sell the property and divest May's title unless he did it substantially in the manner expressly provided and required by the deed, which conferred on him the power of sale.

And as regards purchasers from trustees under powers

of sale, if the condition be one, precedent to the sale, *its observance and performance is essential for giving existence to the power of sale, and no sale under the power can by possibility be sustained unless the condition be performed.*

Hill on Trustees, (marg.,) p. 478.

Blackwell on Tax Titles, pp. 48, 49.

1 Ham. Ohio Rep., p. 232, Taylor vs. Galloway.

3 Comstock's Rep., p. 276, Allen vs. Davitt.

The sale, or pretended sale, by the trustee, then, did *not* divest May's title. The title is *still in the trustee*, and May is at liberty, so far as the deed of trust is concerned, whenever it is sought to be exercised, to tender the money and relieve the premises from the lien created thereby. And we in our bill ask this court, by decree, to declare this sale *void*.

There is also another aspect in which the complainant asks relief to which we deem it necessary to advert.

If the court should hold that the *title* to Rose Bank farm passed to Davenport by the sale under the deed of trust and the subsequent conveyances, then we submit that the Kettell mortgage is extinguished.

1. Cook's deed to Davenport was dated December 16, 1859.

Printed Record, p. 117, Cook's ans., p. 52.

2. December 27, 1859, John P. Cook assigned to Davenport the judgment recovered in the Northern District of Illinois *upon the note secured* by the Kettell mortgage.

The answer of Cook and the evidence shows that on the 28th of July, 1859, the note secured by the Kettell mortgage was assigned to John P. Cook. The assignment of the note (the principal debt) also *carried the mortgage*, (the incident,) so that, on the 28th of July, 1859, John P. Cook became the owner of the mortgage.

Cook, on the 24th December, recovered judgment on the note, (the principal debt,) and on the 27th of December (while Davenport held his title under his conveyance

from E. Cook) John P. Cook assigned the judgment to Davenport. This assignment also transferred to Davenport the mortgage title to Rose Bank. And when the title by deed and the *inferior* mortgage title both vested in Davenport upon the well known principles applicable to *merger*, the mortgage title was merged and *extinguished* in the superior title.

The bill asks for the necessary relief to restrain the collection of the mortgage, and we think this relief should be also granted to complainant.

III.

We come now to consider the main question whether or not, upon the allegations in the bill and the uniform doctrine of equity jurisprudence and the *facts* appearing in evidence, May is entitled to a decree against Le Claire, in the absence of all fraud.

We maintain that, where the terms of an agreement have not been strictly complied with, *or are incapable of being strictly complied with*, still, if there has not been *gross negligence* in the party, and *compensation* for the injury occasioned by a non-compliance with the strict terms can be made *in all such cases, courts of equity will interfere.* The doctrine of equity is *not forfeiture*, but *compensation*, and nothing but such a decree will in such cases do entire justice between the parties. *Equity will decree a specific execution, not according to the letter of the contract, if that be unconscientious, but will modify it according to the change of circumstances.*

Story's Eq. Jurisp., §§ 771, 775, 779, 796, 798, 786, 780.

1 Peters' U. S. Rep., p. 376, Mechanics' Bank vs. Lynn.

6 John's Chan. Rep., p. 398, Champion vs. Brown

We submit that, in all respects, the authorities above cited cover the case at bar, *provided* the allegations in

complainant's original and amended bill are sufficiently broad to allow the relief to which, upon the evidence, he is entitled.

1. The bill first sets out that an agreement of compromise or settlement was entered into between May and Le Claire March 8, 1859, a copy of which is set out in bill.—(Printed Record, pp. 8–9, 78–81.) We believe the court will have no difficulty in finding that this was *an agreement of settlement.* It is so called by Le Claire in the assignment witnessed by Jno. P. Cook.—(Ib., pp. 24, 353.)

2. The succeeding allegations in the bill are explanatory of what precedes, and are designed to designate and specify the property to be conveyed by the terms of the settlement.—(Ib., p. 9–11.)

3. The bill then recites and describes the two liens on Rose Bank, to wit: the Kettell mortgage and the deed of trust to Powers, and avers that they were liens on said farm. (Ib., p. 11–12.)

4. The bill then alleges that "*by and in pursuance of his said compromise agreement with said Le Claire, he delivered to said Le Claire, and the said Le Claire then and there received and accepted the possession of said Rose Bank farm, who from thence hitherto has possessed and enjoyed the same as of his own right and property.*"—(See Bill; ib, p. 12. See Evidence; ib., pp. 44, 132, 362, 420, 458, 511.)

5. That he executed a deed of Rose Bank to Le Claire, and Le Claire endorsed the A. H. Davenport notes *without recourse,* and all were deposited with said Cook and Sargent to be delivered when May should remove the incumbrances on Rose Bank.—(See Bill; ib., p. 12. Evidence, ib., p. 45, 132, 54, 92, 353, 398.)

6. In substance, that May set about removing the incumbrances, but was prevented by the (fraudulent) conduct of the defendants.—(See Bill —, ib., p. 13. Evidence. See above p.)

7. That by a void sale under the trust deed the farm was sold under the deed of trust, by which, with the refusal

of those in combination with Le Claire to receive the money on the deed of trust, he was prevented from removing the incumbrances on the farm.—(See Bill; ib., p. 14.)

8. Then, on page 20 of the Printed Record is found this averment: "Your orator shows and claims that the true object and meaning of said settlement or compromise agreement was and is that said Le Claire was and is indebted to your orator in the amount due on the said Adrian H. Davenport notes and mortgage, and the said parcels of land lying near the said city of Le Claire, *less* the value of said Rose Bank farm; that if from any accident or untoward cause said Le Claire should prove unable to transfer said mortgage and notes or said parcels of land, he is and should be responsible for the value thereof, and in like manner, if it is out of the power of your orator to perform any portion of his agreement, that he should make a compensation therefor."—(See also prayer; ib., p. 21.)

9. The prayer specifically prays for relief against Le Claire, and also general relief.—(Ib., p. 21.)

10. We call the special attention of the court to the whole of the amended bill and the prayer for relief therein, showing that the complainant is entitled to relief as against Antoine Le Claire.—(Printed Record, p. 35–38.)

These allegations, if sustained by proof, (a fact in regard to which there can be no dispute,) allege a substantial claim to relief against Le Claire, for these reasons:

First. The agreement was simply an agreement of settlement or compromise. It starts out with the proposition to *compromise.* It provides that May *shall cancel what is due, or claimed to be due, from him to Le Claire*, and that Le Claire shall cancel and release all claims he has against May upon the basis of the proposition stated in the agreement; and, in the conclusion of the proposition, May still expresses a *preference for an arbitration.* But Le Claire accepts May's proposal and settles on the terms offered therein.

Second. It being an *agreement of settlement*, it is one of those, which courts of equity will support and maintain, upon the salutary principle, that parties are the best judges of their own rights, and of the terms upon which mutual claims should be settled.

1 Story's Eq. Jurisp., § 131 and cases cited.

1 Story's Eq. Jurisp., §§ 150, 151.

Third. Le Claire, by his own acts and those of his agents, instead *of aiding, prevented* the performance of the contract by May. He (May) took all proper steps towards the performance of the agreement on his part, but was prevented from completing it, at least, by the "*neglect*" (if not the misconduct) of Le Claire. And in such case the efforts of May *to perform, will be considered as equivalent to performance.*

1 Maddock's Chan. Practice, p. 421 and cases cited.

Equity will regard that as done, which ought to have been done by both parties.

Le Claire cannot take advantage of *his own wrong*, either active or passive.

Fourth. There was *part performance of the contract by the complainant.* He executed his deed of Rose Bank to Le Claire. Le Claire received and took possession, has never surrendered or offered to surrender it, but has had the use and received the profits thereof. Here was a part performance on the part of May, which entitles him to the relief asked for. It was such a performance as would have taken the case out of the statute of frauds, and entitled a party to a specific performance.

2 Story's Eq. Jurisp., § 761.

3 Barb. Chan. Rep., p. 407, Lowry vs. Tew.

Fifth. It would be utterly unjust and at war with every principle of equity, after Le Claire has taken possession of the farm Rose Bank under the agreement, had the use and received the profits of it for several years, never surrendered or offered to surrender the possession to May,

nor offered to pay him the profits received therefrom, and having retained the possession until May's claim, settled by their agreement, is *barred* by the statute of limitations, to permit him now to say that the agreement was *not a compromise*, and that May must recover upon the original account settled by the agreement.

Sixth. Rose Bank having been bought by Le Claire, May is now able and willing, as prayed in his bill, by deduction of the value of the Rose Bank farm, to perform substantially the contract, to convey and remove the incumbrances on Rose Bank in every respect, *except as to the time.* Every one of the incumbrances has been removed by Le Claire, or can be removed, and the estate of Le Claire can hold the farm free from all incumbrances, and in the very condition that Le Claire was to receive it under his contract with May. On the other hand, Le Claire's estate is in a situation to perform the contract on the part of Le Claire. The estate now holds the lands covered by the Davenport mortgage. The acts of Le Claire only exchanged the securities upon the land for the land itself. And where the parties are in a condition to perform the contract at the time of the filing of the bill or the decree, *substantially*, notwithstanding the *time*, courts will decree a specific performance, if Le Claire or his assignee has continued in possession.

2 Story's Eq. Jurisp., §§ 776 to 780.

3 Paige's Chan. Rep., p. 466, Miller vs. Bear.

6 *Wheaton's Rep.*, p. 528, Brashear vs. Gratz.

Seventh. Under the authorities it is clear that time was *not* of the essence of the contract under the stipulations of the parties. The clause relating to the removal of incumbrances was nothing more or less than a *promise* on the part of May to remove the liens within a year. *The contract does not provide that his failure to do so shall put an end to the contract, or change the rights of the parties.* The authorities to show that in such cases *time* is *not* of the essence of the contract are abundant and conclusive.

See 2 Iowa Rep., p. 126, Young vs. Daniels.
5 Iowa Rep., p. 317, Armstrong vs. Parson.
11 Paige's Chan. Rep., p. 352, Edgerton vs. Peckham.
Newland on Contracts, pp. 238 to 240.
6 Wheaton's Rep., p. 528, Brashear vs. Gratz.

In equity time is not of the essence of the contract, *unless so expressly stipulated by the parties*, or so treated by them. *And that the parties did not, by their stipulation in this contract, make time of its essence* we cite, as almost parallel cases—

1 Iowa, 242, Matthews vs. Gillis.
2 Iowa, 411, Brink vs. Morton.
2 Iowa, 126, Young vs. Daniels.
5 Iowa, 317, Armstrong vs. Person.
11 Paige's Ch. Rep., 352, Edgerton vs. Peckham.
6 Wheaton's Rep., 528, Brashear vs. Gratz.

Eighth. Le Claire, under the circumstances, did *not*, and *could not* rescind the contract. He received from May a deed to Rose Bank. He received *the possession* and entered into the occupation of the premises under the agreement, and his nephew received, beyond all dispute, (upon the evidence,) the rents and profits thereof for one year. His notice to the complainant of date of March 9, 1860, is *not* a notice that *he rescinds* or terminates the contract, but, on the contrary, apprises complainant that he is still ready to perform it. But even if this notice was designed as a notice that he, Le Claire, *rescinded* the contract, it could not put an end to the contract and rescind it, unless Le Claire restored or offered to restore what he had received under it. He, in order to rescind, should have tendered to May the deed to Rose Bank, which May executed to him; also the possession of the farm, and the money received by him as rent of the premises. Without this, *he could not* rescind.

3 A. K. Marshall's Rep., 177, Griffith vs. De Pue.
2 Iowa Rep., 411, Brink vs. Morton.
5 Iowa Rep., 317, Armstrong vs. Pierson.
6 Paige's Ch. Rep., 390, Putman vs. Ritchie.

The contract was never legally rescinded by Le Claire, and even if time was of the essence of the contract, it has been *extended, by his action* in the premises.

11 Paige's Ch. Rep., above cited.

Ninth. The complainant has not been guilty of such *laches* as indicate, on his part an abandonment of the contract. In January, 1860, and before the year for removing incumbrances expired, George L. Davenport, claiming to be the owner of Rose Bank, under the conveyance from Ebenezer Cook, commenced an action against May to quiet the title. This, *while pending*, would have abated any suit commenced by May for the same purpose. The suit of Davenport against May was not discontinued until Feb., 1861.—Printed Record, p. 249.) Shortly thereafter the complainant commenced this action, viz., April 4, 1861.—(Ib., p. 7.) The doctrine in equity is, that in order to bar relief, the party must have been guity of such *unreasonable* delay as to show an intent to abandon the contract.

11 Paige's Chan. Rep., 352, Edgerton vs. Peckham; 6 Wheaton, 528, above cited; 5 Iowa, 317 above cited.

Now, upon the considerations above referred to, we submit that the complainant is entitled to relief as against Le Claire. There has been no material change in the condition of the parties or the property. Both parties are in a situation where substantial justice will be done by granting relief to complainant, upon such a basis as the circumstances require. That complainant was *prevented* from performing the contract by *the bad faith* and misconduct of the agents of Le Claire is too palpable to be de-

nied. That the incumbrances have been removed is equally apparent. A denial of relief bars utterly and entirely complainant's claim to any remedy, because the statute of limitations cuts off his action at law to recover the accounts he had against Le Claire, and which were, in fact, *settled* by the compromise agreement. Unless this court affords relief, complainant is utterly and forever remediless. The circumstances of the case, dispassionately considered, present the strongest claim to the equitable power and discretion of this court by the reversal of the decree of the court below.

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JEREMIAH S. BLACK,
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Counsel for Complainant.

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Supreme Court of the United States.

JAMES MAY, APPELLANT,
vs.
MARGUERITE LE CLAIRE AND AL.,
EXECUTORS OF
ANTOINE LE CLAIRE, DECEASED,
APPELLEES.

Appeal from United States Circuit Court, District of Iowa.

BRIEF FOR APPELLEES.

MATT H. CARPENTER, and
JOHN N. ROGERS,
Counsel for Appellees.

Globe Steam Print, Davenport.

Supreme Court of the United States.

JAMES MAY, APPELLANT,
vs.
MARGUERITE LE CLAIRE AND GEO. L. DAVENPORT, EXECUTORS OF ANTOINE LE CLAIRE, DECEASED, AND *als.*

Appeal from the Circuit Court of the District of Iowa.

BRIEF FOR APPELLEES.

CASE STATED.

The original bill in this case was filed by James May against Antoine Le Claire, Ebenezer Cook, John P. Cook, George B. Sargent, Louis C. Dessaint and George L. Davenport, in the U. S. District Court for the district of Iowa, April 4th, 1861. The defendants (except Sargent) appeared, and demurred to the bill for multifariousness. The demurrers having been argued and overruled, (record, page 87,) they answered the bill, except the defendant, Antoine LeClaire, who had died in the meantime. Jan. 27th, 1862, complainant filed a bill of revivor against Marguerite LeClaire and George L. Davenport, executrix and executor of the last will and testament of Antoine LeClaire, dec'd, and also against numerous other persons, alleged to be devisees of said deceased (record, pp 7 to 42). Of said devisees, the following named only, viz., Marguerite LeClaire, Joseph A.

LeClaire, David A. LeClaire, David Napoleon LeClaire, George LeClaire, Louis LeClaire, Antoinette LeClaire and Mary LeClaire were served with subpœna, the others being resident out of the district (record, pp 5,6,88,). Answers to the bill of revivor and original bill were filed by the defendants, George L. Davenport as executor, and Marguerite LeClaire as executrix and in her own right (record, pp 43—78,). On complainants' motion, a guardian *ad litem* was appointed for David Napoleon LeClaire, George LeClaire, Antoinette LeClaire and Mary LeClaire, alleged to be infants (record page 89,); but such guardian filed no answer for said infants nor did any of the other alleged devisees, defendants to the bill of revivor, appear or answer. April 4th, 1862, an order was entered that the cause stand revived against the defendants served, named as above stated (record, p. 88,).

Complainant filed replications to the answers filed (record, pp. 82, 83,). On the organization of the U. S. District Circuit Court, for the District of Iowa, the cause was transferred by operation of law to that court.

A very large amount of testimony was taken by complainant, including the depositions of the defendants, Marguerite LeClaire, Geo. L. Davenport, Louis C. Dessaint and Joseph A. LeClaire, taken at great length, on oral interrogatories. No testimony was taken by the defendants. The cause was brought to a final hearing on the pleadings and proofs, at the May term, 1865, and a decree rendered dismissing the bill with costs, on the merits (record, p. 303,). June 5th, 1868, complainant prayed an appeal, which was allowed, and is the appeal now before the Court (record, pp. 1, 2.)

The original bill itself is nowhere to be found, in the transcript sent up from the court below. What purports to be a copy of it is contained in the bill of revival, as at first filed (record, pp. 7—34,), but was expunged therefrom on exceptions for prolixity and impertinence, taken by defendants (record, pp. 83, 88, 89), to which complainant submitted, and amended his bill of revival (record, p. 4,) so as to make it state merely the general scope and object of the original bill, unless they think proper to rely on this al-

leged (but anauthenticated) copy, inserted in, but expunged from the bill of revival, for such information.

The transcript sent up is a confused mass of papers and record entries thrown together without the least regard to order or method of any kind. It appears to have been originally made up for transmission to this Court in twelve separate parcels, (see remarkable certificates of the clerk, page 3), and is very appropriately described in the clerk's final certificate (page 1), as a "bundle of papers." As a specimen (out of many) of its inaccuracy, as well as to furnish the Court with a clue to evidence which may be of value to defendants, their attention is here called to the fact that all the exhibits produced or identified by the witnesses, George L. Davenport, Louis C. Dessaint, and Joseph A. Le Claire, on their cross-examination by defendants, together with certain accounts produced by said witness, Davenport, at the request of the complainant's counsel, on his direct examination (all of which were attached to and certified up with the depositions of said witnesses, by the examiner before whom they were taken) appear in the transcript on pages 198–232, entirely separated from the depositions of which they form a part, and without anything to connect them therewith.

Of such portions of this crude and disorderly mass as are regarded by appellees' counsel as of the least materiality, the following is a digest:

The original bill, according to the so called copy thereof, above referred to (record pp. 7–34) alleged in substance, that prior to 1859 Antoine Le Claire had become indebted to complainant in consequence of transactions between them during a series of twenty years, the nature and amount of which indebtedness is not stated. That early in 1859, complainant made a written offer to Le Claire "to compromise all matters in controversy or dispute" between them, as follows, viz:

That May should give up all claims against Le Claire, and convey to Le Claire a certain farm of 143 acres, called "Rosebank Farm," giving Le Claire "a clear deed" thereof and removing all incumberances thereon, within twelve months.

That Le Claire should release all his claims of every kind against May; and should also convey to him all his right, title, and interest, "to all that part of his reserve at the head of the rapids, which he sold or contracted to sell to Captain A. H. Davenport, of Le Claire," and also to transfer to May "all kinds of payments and securities that he has received from A. H. Davenport." Also, to give May "a good deed for the lands he (Le Claire) owns on an island about three miles below Le Claire, and for the land he owns on the (Iowa) mainland, near said island."

Further averments undertake to identify this property, and explain the proposition in respect thereto.

As to the property sold by Le Claire to A. H. Davenport, it is averred that Le Claire conveyed it to Davenport, May 7th, 1857, for $35,000, for which Davenport executed to Le Claire his notes, five in number for $7,000 each and secured them by a mortgage on the land, and afterwards as further security, transferred to Le Claire a large number of other notes held by Davenport against other parties; and that Davenport's said notes and mortgage and the collateral notes constitute what was to be transferred by Le Claire to May, according to the agreement between them.

That Le Claire agreed to this proposition in writing on the face thereof, March 8th, 1859.

That at the date of said agreement said Rosebank Farm was subject to two certain incumbrances, viz:

1st. A mortgage on seventy acres thereof, dated November 1, 1856, made by said May to George F. Kettell, to secure payment of $3,125, payable November 1, 1867, with interest at ten per cent. after maturity.

2d. A deed of trust, dated May 1, 1857, executed by May to Charles Powers, in trust, to secure payment of May's note to Nicholas H. and Anthony T. Streppell, for $6,550, payable May 1st, 1858, with interest at ten per cent; with a clause authorizing said Powers, the trustee, in default of payment of said note at maturity, to sell said farm at public auction (after giving notice by advertisement) "in parcels and tracts of such size as said Powers shall deem most advantageous for said party of the first part," in order to pay said note, and to convey the land in fee simple to the purchaser.

That in pursuance of the agreement of compromise, May delivered possession of said farm to Le Claire. That he also executed a deed of the farm to Le Claire, and deposited it with Cook & Sargent, bankers of Davenport, Iowa, (a firm consisting of defendants, E. and J. P. Cook, and George B. Sargent) and that Le Claire also deposited with them, A. H Davenport's notes and mortgage to Le Claire for the property "at the head of the rapids," by the terms of the agreement to be transferred by Le Claire to May, together with the collaterals therefor; with the intent and understanding that these should be mutually delivered when May should have cleared off the incumbrances on the Rosebank Farm.

That May went to Pittsburgh, Pa , to raise money to pay off said mortgage and deed of trust, and found "a party" there willing to advance the money and made an arrangement with him which would, in July, 1859, have secured the payment of said incumbrances, but for the wrongful conduct of defendants.

That Le Claire and the other defendants acting as his confederates, had entered into a conspiracy to prevent May from complying with his agreement of compromise with Le Claire, by procuring Powers, the trustee in the deed of trust, to sell the farm under the power of sale in said deed, and by bidding it off at the sale, and so depriving May of the title and control of said property.

That John P. Cook, acting in pursuance of this conspiracy, by his persuasion, and influence procured Powers to advertise the property for sale under the trust-deed, while May was at Pittsburgh. That Cook further requested and urged Powers not to influence any bidders to come to the sale, stating that either he or said Dessaint would be present to bid, and that it was agreed between Cook and Powers that if either Cook or Dessaint became the purchaser at the sale, Cook should pay Powers the whole amount both of the trust deed and mortgage.

That May went to Davenport with his "friend" (name unknown) from Pittsburg, on the day before that fixed for the sale, with means to pay off the trust deed and mortgage, and for the purpose of paying them. That he then saw LeClaire and told him he had come prepared to pay those

incumbrances and asked *whether LeClaire would then give up to him the A. H. Davenport mortgage and notes, on receiving security for the payment by May of certain other judgment incumbrances on the farm*; as to which LeClaire referred him to John P. Cook (record, p. 14).

That the means provided by May for the payment of the trust deed and mortgage were bankers' drafts. That on the day, and near the hour, advertised for the sale of the farm, he and his Pittsburg friend called on Powers to pay said incumbrances, and were informed by Powers that the drafts would be satisfactory, and that the sale should not take place. That *while May was in conversation with Powers, for the purpose of inducing him to furnish the means to pay certain judgment incumbrances on the farm*, for about $3,500, a note was handed to Powers, who then stated that he was called out on other business, and went away. That the note was written by John P. Cook, to induce Powers to withdraw clandestinely from the company of May, and go up to the court house and sell the farm, of which May was ignorant. That Powers accordingly went to the court house in Cook's company (without May's knowledge) and there sold the farm under the trust deed, subject to the mortgage, at auction, and that it was struck off to Dessaint for $5,000, and was conveyed by Powers to him, in pursuance of the sale.

That Cook, the next day, paid Powers the full amount of the trust deed incumbrance, amounting to $7,440, partly in cash and partly in a check and certificate of deposit, and also gave Powers his [Cook's] note, endorsed by LeClaire and Ebenezer Cook, for the Kettell mortgage, which Powers procured to be assigned to J. P. Cook. That all this was done in pursuance of the conspiracy aforesaid, Cook acting as LeClaire's attorney and agent. That Dessaint on fact paid nothing in the purchase, but merely suffered his name to be used for LeClaire's benefit. That Dessaint, July 27, 1859, conveyed the farm, without any consideration paid him therefor, to Ebenezer Cook. That about Dec. 20, 1859, Cook & Sargent became insolvent. That Dec. 16, 1859, Ebenezer Cook conveyed the farm to Geo. L. Davenport. That the consideration, if any, for such con-

veyance, was indebtedness of Cook & Sargent, and liabilities assumed by Davenport, for them, on account of which he has as yet suffered no damage. That Davenport had full notice of the alleged fraud on the sale by Powers.

That Davenport, after receiving said conveyance, filed his petition against May, in the District Court of Scott County, Iowa, claiming title to the farm under the trust deed sale and said conveyances, and praying that his title might be declared valid, &c. That afterwards, to-wit, Jan. 20, 1860, May took the deposition of Charles Powers, in said suit, a copy of which is attached to the bill as an exhibit. That shortly afterwards Powers died, and that at the next term Davenport dismissed his suit. That this dismissal was for the purpose of preventing said deposition from being used in evidence by May, in any subsequent suit; but complainant claims that it should be admitted in evidence in this suit.

That J. P Cook has commenced a suit against complainant on the note secured by the Kettell mortgage, in the state of Illinois.

That the trust deed sale was void, because the land was not sold in parcels, but was offered in a lump, with the privilege to any bidder of bidding for a smaller tract than the whole, if he chose to do so.

The prayer is, that LeClaire be decreed to transfer to May the A. H. Davenport notes and mortgage, and the parcels of land in the compromise agreement mentioned. That the Cooks and Sargent be required to deliver to May the said mortgage and notes. That the trust deed sale of the farm be set aside. That May be allowed to redeem the farm from incumbrances. That if this is not done, he be allowed to make compensation to LeClaire for the value thereof, and that J. P. Cook be enjoined from prosecuting his suit on the mortgage note against May, and for general relief.

The bill is not sworn to. Copies of the various deeds, mortgages and other documents referred to in it are incorporated into it, or annexed as exhibits (record, pp. 21—34).

An amendment to the original bill, filed Aug. 5, 1861, is alleged in the bill of revivor, which purports to set forth a copy thereof (record, pp. 35—38). Said copy was also ex-

punged by the order made on defendants' exceptions (p. 89). Said amendment is not otherwise shown by the record.

According to said copy, it alleges a foreclosure of the A. H. Davenport mortgage to LeClaire, at the suit of LeClaire, in the Scott Co., Iowa, District Court, in 1860, and a decree by consent in favor of LeClaire, for $41,708.32, and a sale of the mortgaged property under the decree, and a Sheriff's deed to LeClaire, in pursuance thereof. That an understanding was had between LeClaire and A. H. Davenport, that Davenport should be released from all personal liability on the decree, beyond what should be realized from the mortgaged property.

The prayer is that LeClaire be decreed to pay to May the said sum of $41,708.32, or that he be decreed to convey to May the property so purchased by him, at the foreclosure sale, at its real value, to be ascertained by the Court, and that for the excess of the amount owed by A. H. Davenport, on his notes and mortgage, to LeClaire, over and above the actual value of said property, complainant may have judgment against said LeClaire; and for general relief.

The sworn answers of the defendants, John P. Cook, George L. Davenport, Ebenezer Cook and Louis C. Dessaint, and of George L. Davenport, as executor of A. Le Claire, dec'd, are very full and explicit. The special attention of the Court is respectfully called to these answers, as contained in the record, pages 43—47. Admitting the various deeds, mortgages &c., set forth in the bill, and the information and belief of defendants that some contract of a nature similar to that alleged in the bill had been made between May and LeClaire, they deny, on information and belief, the existence of any indebtedness at the time, from LeClaire to May; admit that the nature of LeClaire's interest in the property sold A. H. Davenport, and referred to in the agreement of compromise, was as alleged in the bill; deny all knowledge or information as to the correctness of the description given in the bill of the other pieces of property to be conveyed by LeClaire to May, or of the value thereof. They then proceed to deny most positively and

particularly, the allegations of the bill, as to a conspiracy between LeClaire and the other defendants, to bring about a sale of the farm under the trust deed, and to deprive May of the title; and as to the acts alleged to have been done, in pursuance of such conspiracy, each defendant denying the truth of these allegations positively, and of his own knowledge, as to himself, and all knowledge, information and belief thereof as to the others. Jno. P. Cook, who is a member of the legal profession, and is charged with being the leading spirit and prime mover in carrying out the pretended conspiracy, as the special agent and attorney of LeClaire, positively denies that he did anything whatever to procure or influence Powers, the trustee, to sell the farm (as the bill charges), and denies that he acted for LeClaire in anything he did in reference to the sale, but avers that, on the contrary, he acted as the attorney for the defendant Dessaint, at his request, both in his negotiations with Powers before the sale and in making the payment of the purchase money and in receiving the deed afterwards. Both he and Dessaint state positively that Dessaint desired to and did purchase the farm for his own sole benefit, and actually paid to Powers the full amount of $7,440, out of his own proper funds, without aid or advance from LeClaire, or any other person.

The charge of fraudulently instigating Powers to withdraw from May's company, and sell the farm without May's knowledge, is expressly and in detail denied. It is further denied that May in fact had provided the necessary means or was able to pay off the trust deed and mortgage debts on the farm, as alleged by him; but it is alleged that on the contrary he had only made a conditional bargain for a loan to him of $6000, for which he was to give the lender, as security, the two notes of A. H. Davenport first maturing, for $7000 each, which he was to receive from LeClaire, under the compromise agreement; and that this arrangement fell through entirely, because May was wholly unable to furnish the stipulated security, not being entitled to demand the Davenport notes from LeClaire until he should first have cleared off *all* incumbrances from the farm, which, besides the trust deed and mortgage, was incumbered by judgments

to a large amount. That the sale of the farm under the trust deed was therefore due wholly to May's inability to discharge the incumbrance, and not to any wrongful conduct of defendants.

It is further alleged, both by Dessaint and E. Cook, that the latter, in good faith, purchased the farm of the former on his own account, and in fact, paid Dessaint therefor $7,770, or thereabouts, out of his own funds.

And it is further averred by E. Cook and Geo. L. Davenport, that the consideration for the conveyance of the farm by Cook to Davenport was the assumption by Davenport of the payment of two notes, for $5000 each, made by Cook, and which had been indorsed by Davenport for Cook's accomodation, and negotiated, and were afterwards taken up by Davenport; the firm of Cook & Sargent, of which Cook was a member, having failed in December, 1859.

The above is a mere sketch in outline of the contents of these answers.

In the answer of Davenport as executor, it is further averred that the farm was incumbered by certain specified judgments against May, in addition to the mortgage and trust deed, to the amount of several thousand dollars, and that May's interest therein (if any) had been sold under execution on one of these judgments, Sept. 29, 1860, and a sheriff's deed, in pursuance of said sale, executed to Drawson Wulsin, the purchaser, October 1, 1861.

Supreme Court of the United States.

JAMES MAY, APPELLANT,
vs.
MARGUERITE LE CLAIRE AND GEO. L. DAVENPORT, EXECUTORS OF ANTOINE LE CLAIRE, DECEASED, AND *als.*, APPELLEES.

Appeal from United States Circuit Court for Iowa.

Brief of Argument for Appellees.

I.

The appellant's right to the relief of whatever kind, sought by him in this suit, depends entirely on his success in establishing the fraudulent conspiracy, and the acts alleged to have been done in execution of it, set forth at such length and with such circumstantial detail in his bill. This constitutes the *gravamen*—the sum and substance—of his case, to which everything else is subordinate and incidental. And, since the ultimate and substantial relief, whether specific performance, as prayed by the original bill, (p. 20), or compensatory damages, as prayed by the amended bill (p. 38), is demanded against the estate of Antoine LeClaire, complainant is under the especial and primary necessity of making out the alleged conspiracy and execution thereof against Antione LeClaire, individually.

A moment's consideration of the case will render this evident. Complainant's allegation of an undefined indebtedness of LeClaire to him, prior to the agreement of March 8th, 1859, denied in the answers, is without a vestige of support in the evidence. It derives no aid from the terms of the agreement itself, which does not purport to be an accord and satisfaction of an admitted debt from LeClaire to May, but a "compromise of all matters in controversy or dispute," between them: *each* party agreeing to cancel and release all past claims against the other. That LeClaire did not regard himself as indebted to May, but the contrary, appears from his declarations made before this controversy arose, in a conversation called out by complainant, (deposition of J. A. LeClaire, direct interrogatory, 344, 345, p. 442; cross interrogatory, 28, p. 452), to the effect that May was indebted to him, and not he to May. No evidence, whatever, has been introduced to show the contrary.

Whatever rights, therefore, complainant has against LeClaire, are founded entirely on the agreement of March 8th, 1859, and are limited by its terms. But that agreement is simply a contract for an *exchange* of property. By it, May was entitled to nothing from LeClaire until he should convey to him, within one year from the date of the contract, a clear and unincumbered title, in fee-simple, to the farm described in the instrument. Now, there is no pretence that May has ever performed his part of the agreement, or that he has ever tendered performance, or been ready and willing to perform. He alleges, as excuse for conceded non-performance, that he has been wrongfully prevented by LeClaire from performing, by the fraudulent conspiracy and its execution, already referred to. It follows, that upon proof of these allegations, his whole title to relief must rest.

II.

This alleged "conspiracy" is utterly unsupported by proof. It is the merest figment of complainant's diseased imagination.

(1.) What is it that the bill alleges? It is admitted that complainant's farm, which he was to convey to

LeClaire, free from all incumbrances, was subject to a mortgage past due, amounting to about $3,300; to a deed of trust, (substantially a mortgage with a power of sale, and a species of security very common in the western states, and particularly in Iowa), also overdue, and securing a debt, amounting with interest, to about $7,300; and in addition to the lien of judgments against the complainant, left indefinite in the bill, (p. 14) but shown by defendant's exhibits, to have amounted, with accrued interest, to about $4,800; making a total incumbrance of $15,400. (This is somewhat less than the actual amount). The farm was sold under the power of sale in the trust deed, by the trustee therein named, July 20th, 1859, after giving due notice by advertisement, as provided by the deed, and was purchased by the defendant, Dessaint. It is not pretended that complainant had any objection whatever to urge against the entire validity of the trust deed as an incumbrance, nor against any of the others; neither is it suggested that the full amount of the debt secured thereby, was not past due and unpaid; nor that any reason existed, down to the very day and hour of the sale, why the trustee might not properly, and in the strict line of his duty, proceed to enforce the lien of the security, for the purpose of raising the money due thereon. Yet it is claimed that not only the actual sale, but all the preliminary proceedings looking thereto, were brought about solely by a fraudulent combination between LeClaire and his friends to prevent May from fulfilling his agreement with LeClaire, by divesting him of ownership of the farm by procuring a sale under the trust deed; that it was by *their* "persuasion and influence," and not by a desire to discharge the duties imposed upon him by his trust, that Powers, the trustee, was induced in the first instance to advertise the farm for sale; that with the same fell intent, they persuaded Powers not to bid or have bidders at the sale: and that finally, when the complainant, on the day and hour of the proposed sale, had gone to Powers with the money in his hands to discharge the debt in full, and was actually in Power's office and company, and had communicated his purpose then and there to discharge the debt, and when nothing remained to be done but that complainant should put his hand into his pocket

and hand over the money; (a state of things which would seem to entail inevitable defeat on the defendant's machinations,) the indomitable arch "conspirator" rising superior to all obstacles, actually at that stage of the proceedings, induced Powers to run away from complainant's presence to the court house, and there to perform the last act of the tragedy (or comedy) by selling the farm to Dessaint, without the knowledge of the confiding complainant!

(2) In order to let the Court understand who and what manner of man Antoine LeClaire was, of whom this preposterous tale is told, we deem it not improper to refer to a treaty made between the United States, represented by General Winfield Scott and Governor John Reynolds, of Illinois, and the confederated tribes of Sac and Fox Indians, at Fort Armstrong, on Rock Island, Ill., Sept. 21, 1832, (U. S. stat. at large, vol. 7, p 374–6), by which the Indians ceded to the United States a large tract of land on the west side of the Mississippi.

Art. 6th of the treaty is as follows :

"At the special request of the said confederated tribes, the United States agree to grant by patent, in fee simple, to Antoine LeClaire, interpreter, a part Indian, one section of land opposite Rock Island, and one section at the head of the first rapids above said Island, within the country herein ceded by the Sacs and Foxes."

This simple-minded, illiterate old French half-breed, upon whom the bounty of the United States (or rather of his friends, the Sacs and Foxes) and the settlement and growth of a large town on the land thus granted him, had in process of time conferred wealth, was as incapable, intellectually, of comprehending such a scheme of fraud as is here attributed to him, as he was morally of approving it; as no man living knows better than the complainant.

And we desire now to point out to the Court, and to emphasize the statement, that there is not one iota of evidence in all this enormous record, having the least tendency to show that Antoine LeClaire, for whose sole benefit this pretended fraud is alleged to have been committed, and whose representatives are the principal, if not the sole, parties to

be prejudiced by a decree in favor of complainant, *so much as knew of the existence* of the deed of trust on the farm; much less that he did, concerted or sanctioned anything looking to the procuring a sale thereunder, or preventing complainant from clearing off the incumbrance. There is not a particle of evidence that he ever desired to escape from the fulfillment of his contract with May, or had any other intention than to carry it out to the letter. Complainant has himself called out evidence showing affirmatively that such *was* his intention, viz., his declarations, *ante litem motam*, to A. H. Davenport (ints. 77, 78, p 396) and to J. A. LeClaire (int. 344, p 442, and 28, p 452, already cited). And there is nothing in the least tending to impeach the entire good faith of these declarations.

(3). But it is said Mr. LeClaire had an attorney, Mr. John P. Cook, (a gentleman whose name will be found on the roll of counselors of this court), who is charged with being the prime mover in the fraudulent scheme, and the principal agent in its execution. Waiving, for the present, the question whether any case is made out on the evidence against Mr. Cook personally, it may safely be laid down, we presume, that in order to charge a man or his estate with liability for a fraud committed by him, *by attorney*, it is at least indispensable to prove the authority of the attorney. The implied powers of an attorney-at-law, even under a general retainer, will hardly be claimed to extend to the commission of frauds at his discretion, on behalf of his client, so as to render the client personally responsible for them, as if done by himself; much less when no employment of the attorney whatever is shown, in respect to the business in which the alleged fraud is claimed to have been committed. Now, absolutely all that is shown, as to the relations between LeClaire and Cook, is that Cook had at various times been consulted or employed by LeClaire, as his legal adviser, or attorney, as he doubtless had been by hundreds of other persons. There is not only no particle of evidence that he was employed by LeClaire, or assumed to act for him, in respect to the matter of this trust deed sale, but there is the positive and uncontradicted evidence of Cook

himself, in his own answer, directly responsive to the bill, and of Dessaint, both in his answer and deposition as a witness called by complainant, that in all that Cook did in respect to this sale he acted solely as Dessaint's attorney, expressly employed by him, for the purpose of negotiating for him, and seeing that he obtained a good title to the farm he desired to purchase. The theory, then, that LeClaire committed the fraud "per procuration" necessarily falls to the ground. It would be equally hard on the legal profession and their clients, if the employment of an attorney by A should render A responsible for acts subsequently done by the attorney, under retainers from B, C and D. No man, under such a rule, would dare to employ an attorney.

III.

We now proceed to inquire how the case stands, as against the defendants generally.

(1). And under this head we first direct attention to the sworn answers of the defendants, John P. Cook (pp 43–54), George L. Davenport (pp 55–61), Ebenezer Cook (pp 62–67), and Louis C. Dessaint (pp 68–73), directly responsive to the bill, and positively and explicitly denying all the charges of fraud, conspiracy, &c., contained therein. Antoine LeClaire died before answering. To the bill of revivor filed against his representatives, as well as to the original bill, his executors, George L. Davenport and Mrs. Marguerite LeClaire filed answers (pp 74–78), the former referring to his answer already filed in his own behalf, with some further additions, and the latter denying all knowledge or information in respect to the matters charged in the bill.

It is unneccessary, in this Court, to do more than advert to the well-settled rule, as to the weight to be given, as evidence, to the sworn answers of defendants, responsive to the bill, and denying positively the charges thereof; a rule which has been repeatedly recognized and acted on in this Court. (Hughes *v.* Blake, 6 Wheat., 453; Carpenter *v.* Ins. Co., 4 How. 185; Parker *v.* Phetteplace, 1 Wall, 684; Tobey *v.* Leonards, 2 Wall., 423.) Parker *v.* Phetteplace is espe-

cially in point, being a case where strong circumstantial evidence of fraud was held insufficient to overcome the positive denial of the answer, aided by the testimony of a witness charged with being a party to the fraud, and examined on behalf of *defendants*. In the present case, the complainant himself, not satisfied with the sworn answers, has called two of defendants as witnesses, who, though subjected to a most searching oral examination, have negatived the charges of the bill as completely in their testimony as in their answers. In asking for a decree, he is obliged to ask to have the testimony disbelieved which he has himself called out.

(2). We now propose to notice, in their order, the acts alleged to have been done by defendants, in execution of their "conspiracy," and see what is the evidence in respect to them; premising that of the "conspiracy" itself, independent of said acts, there is no evidence whatever.

And first, it is alleged that John P. Cook, in pursuance o the conspiracy, called on Powers, the trustee, and "by his persuasion and influence, and the influence of said LeClaire and the other defendants to this suit, induced said Powers to advertise for the enforcement of said trust deed, while your orator was at Pittsburg," &c. (p. 13.)

Of this allegatfon, which is positively and *in toto* denied by J. P. Cook in his answer, (p. 46) there is not a vestige of proof. The admitted fact that the debt secured by the trust deed was long past due would seem of itself to have furnished sufficient inducement to the trustee to take steps to enforce the security. But the complainant has taken the supererogatory trouble to hunt up and put in evidence a document, which effectually *disproves* his own allegation, viz: a letter written by Powers, while at Pittsburg, negotiating with May, to his partner McLean, at Davenport, dated June 26th, 1859, (p. 111) in which Powers expressly directs the publication of the notice of sale, saying "I am tired of waiting on him; and that will bring him to time." And he adds, "*Capt. May is very mad at me because I told him the property must be advertised*; but I can't help that, it must go through, we have waited long enough." In the light of this piece of evi-

dence, which complainant has, at great pains, himself disinterred and put into the case, (see Congdon's deposition, interrogatories 25–33, pp. 383–4,) the Court will be able to judge of the truth of another allegation of the bill, (p. 14, at top) "that at or about the time the said advertisement bears date, your orator met said Charles Powers, in said city of Pittsburg, who then and there conversed with your orator in reference to said trust deed and mortgage incumbrances on said Rosebank farm, and desired your orator to pay said trust deed incumbrance, *but gave your orator no information that he had ordered an advertisement for the sale and enforcement of the same.*" The object of this averment is plain enough; it was to create the impression that complainant was purposely kept in the dark, as to any intention to enforce the trust deed, and so to fortify the charge of fraud. From this little specimen of willful falsity let the Court judge of the ingenuousness and honesty of the entire narrative of the bill.

(3). The next overt act charged in the bill is (p 14) that after Powers' return from Pittsburgh J. P. Cook called on him "and requested and urged said Powers not to have or influence any bidders to come to the sale of said Rosebank farm, to be made in the enforcement of said trust deed, and *that he or* said defendant, Louis C. Desssint, would be present to bid on said property, and that in case the said property was sold to the said Dessaint, that *he, Cook*, would see that the money was paid on such bid, and that if said Dessaint, *or himself*, should become the purchaser of said premises, at said sale, *he, Cook*, would see that the whole amount of the trust deed claim should be paid off, as also that of the said mortgage incumbrance, which said Powers represented, and which was prior in its lien to that of said trust deed; *and thereupon it was agreed, by and between said Charles Powers and said John P. Cook, that in case said John P. Cook or said Dessaint should become the purchaser, under said trust deed sale, said Cook should liquidate and satisfy the whole amount due on said trust deed and said mortgage.*"

Mr. Cook, in his answer (p 47), positively denies all the material parts ot this charge, and especially that he re-

quested Powers not to influence bidders to attend the sale, or used any means whatever to keep them away; also that he made any personal agreement to pay the money, in case of sale to Dessaint, or to see to its payment; and that he ever entertained or expressed the idea of himself becoming the purchaser, or of himself paying or seeing to the payment of the money. He admits that, at the request of Dessaint (who had seen the advertisement, and desired to purchase the farm), and as his attorney, he called on Powers, some days before the sale, to ascertain the amount of the liens, or claims, held by Powers on the farm, and that he told Powers that Dessaint wanted to purchase, provided he could do so for the amount secured by the trust deed; that Powers said it would be sold subject to the prior mortgage; that he [Cook] reported this to Dessaint, who agreed that if he should become the purchaser for less than the amount of the trust deed incumbrance, he would pay the balance, and take an assignment of the note, and would purchase the mortgage; that Cook, as Dessaint's attorney, communicated this to Powers, who assented to the proposal; that this was the only agreement he [Cook] ever made with Powers about the matter, and that he acted throughout as Dessaint's attorney, and at his instance.

There is no evidence in the case supporting the complainant's version of these negotiations. If Powers' deposition be cited in its behalf, we reply that that deposition is not evidence in this case; and further that if it were, it does not materially aid the plaintiff. Cook's statement is supported by Dessaint (so far as relates to his instructions and authority to Cook as his attorney, and to what Cook told him as the result of his interview with Powers,) both in his answer (p 69, 70,) and in his testimony (ints. 25–60, pp 477–9); in the latter with some unimportant variations in details, easily accounted for by lapse of time (five years) and failure of memory. There is no evidence on the subject not already alluded to.

(4). We now come to the brilliant and truly Napoleonic piece of strategy, by which it is alleged, that the fraudulent scheme of the defendants was, in the face of obstacles

apparently insuperable, carried into successful execution, and victory actually snatched from the very jaws of defeat. We allude, of course, to the allegations of the bill, (p 15) in substance, that on the day, and about the hour, appointed for the sale, May went to Powers' place of business, in company with his "friend from Pittsburgh," with the money in his pocket to pay off the trust deed; that Powers, being informed of his purpose, told him it was all right, and "the sale should not take place;" that all was perfectly understood and settled between them, and nothing remained to be done to complete the business, but for May to hand over the money, which he could and would have done; but that while things were on this most pleasant and satisfactory footing, and while the parties, before completing the transaction by paying and receiving the money, were engaged in conversation on another subject, suddenly a note is handed to Powers, who after reading it excuses himself on some pretence, rushes off to the court house, and there sells the farm under the trust deed to Dessaint, unbeknown to the complainant, who is exceedingly astonished, in the course of an hour or thereabouts, to learn of a citizen of Davenport, the fact of the sale; that all this is done under the express instigation of John P. Cook, "acting as attorneyand agent for Antoine LeClaire," who wrote and sent the note aforesaid to Powers, to induce him "to withdraw clandestinely from the company of your orator, and have him sell said Rosebank farm to himself or said Louis C. Dessaint, for the use and benefit of said LeClaire," and who actually "had a horse and buggy in front of his office, ready prepared in advance, to conduct himself and said Powers to the court house."

Such is the highly colored and exceedingly improbable story told by the complainant. We say that in its essential and leading features, it is utterly destitute of truth.

First, as to the note written by Mr. J. P. Cook to Powers, which figures so prominently in the tale. The writing of a note, in and of itself, is innocent enough. The character of the act depends on the contents. The document in question is not produced, nor a copy of it. J. P. Cook, in his answer positively denies having written any such note to Powers

as is alleged in the bill, and denies all recollection of having written any at all: says *that he had no knowledge or information, whatever, that Powers was then in May's company, if such was the fact*, and that if he sent any message, verbal or written, to Powers, it was merely to the effect that he was ready to go to the court house to attend the sale, and was sent for the purpose of avoiding unnecessary waiting at the place of sale, both he and Powers being actualy engaged in business, and not wishing to lose time unnecessarily.

We now invite attention to the statement of the contents of this alleged note from Cook to Powers, (widely differing from that contained in the bill in this cause,) given by complainant in his sworn "answer and cross bill," in the suit of George L. Davenport against him, in the Scott County District Court, to be found on page 135 of the record. This document is there represented in strict accordance with Powers' deposition in that case, from which, indeed, May professes to have gotten all his information about it, as "cautioning the said Powers not to take any doubtful drafts in payment of said deed of trust and mortgage." It is not pretended that complainant has since attained any new light from other sources, as to the contents of this apocryphal "note." He has however, in his bill in this case, thought it expedient to improve upon his former version of it; to heighten the color of the picture very materially; and therefore represents the "note" as suggesting to Powers to withdraw, clandestinely, from May's company and go up to the court house and sell the farm without his knowledge! This story is simply manufactured "out of whole cloth." It is a pure *invention* of the complainant. And again we say, let the Court judge from this further specimen, of the truthfulness of the whole narrative.

But this is not all, nor the most material point to be noticed under the present head. The whole charge of fraud as actually practiced on the complainant in respect to this sale, is based upon his representation as to his actual ability and intention at the time to discharge the debt. That representation is, as already shown, that, in effect, he had the money in his hands ready to be paid over; that he went to Powers for the purpose of paying it, that Powers so understood it,

and that the actual handing over the cash was all that remained to be done. Now, whether this statement is or is not true, what was the actual state of the case about it, is a matter peculiarly within complainant's personal knowledge, but not within that of the defendants. If he shall be convicted of imposing upon the Court a false account of this matter, so vital to his claim, then certainly there is an end of his case. False in this, he may confidently be pronounced false in all.

We assert that the complainant's whole story, as to his pecuniary situation at the time of this sale, is a tissue of deceit and prevarication. We say that instead of having at his command the means to pay off the trust deed and mortgage, he had not at his command a dollar for that purpose. We claim that his actual situation was precisely this: that he had made a bargain with some persons at Pittsburgh, whose names are not disclosed, for a loan, possibly of $9,000, agreeing to give them, as security therefor, two of the notes (those first maturing) of A. H. Davenport to LeClaire, for $7,000 each, secured by the mortgage, which May was to receive from LeClaire on fulfillment of his part of the contract between them; that the parties who were to furnish the money, were represented by the complainant's "friend from Pittsburg," whose name is not disclosed by the bill, but who turns out by King's testimony to have been Mr. James M. Gallagher, a Pittsburg attorney, who came out to Davenport with May, with the drafts for the money in his custody, for the purpose of seeing that the security agreed on was furnished, and the interests of his clients properly protected: that the whole arrangement fell through and became abortive, simply because May was utterly unable to furnish the stipulated security for the loan, viz: the A. H. Davenport notes; not being entitled to receive them under his agreemeen with LeClaire, without first clearing off *all* incumbrances on the farm, which required over $15,000, instead of $9,000, and having been so foolishly and characteristically improvident, as to trust to luck for some means to turn up at the eleventh hour, to enable him to get possession of the A. H. Davenport notes, either by prevailing on LeClaire to waive full compliance with the terms of the agreement, or inducing

Powers or somebody else to advance the additional sum necessary to clear the farm from incumbrance; that he found himself, as might have been expected, unable to accomplish that end; and that for this reason, and this alone, the farm was sold under the trust deed, his "friend from Pittsburg," going back to Pittsburg with the $9,000 drafts in his pocket, and the disagreeable consciousness of having been brought out to Iowa on a fool's errand. This we assert to be the plain, unvarnished tale of the whole transaction.

What now, is the evidence bearing on this point? It is here observable, that the complainant's version of the matter being fully denied in the answers, on information and belief, and being vital to his case, it was incumbent on him to prove its truth; and it would naturally have been expected that among the first witnesses he examined would have been his "Pittsburg friends;" and most of all Mr. James M. Gallagher, who could fully substantiate this part of his case, if true. None of these parties, however, are put on the stand. Leaving out of view, for the present, the deposition of Powers, taken in another suit, and admissible, if at all, to a very limited extent in the present, the testimony of complainant on this subject comes entirely from his old friend and former partner, John Andoe, and his son-in-law John T. King. Before adverting to their testimony, however, we will call attention to some passages in the complainant's bill which afford some significant inklings as to the real truth of the matter.

First, it is expressly admitted in the bill, (p. 13) that complainant was under the necessity of raising the money he needed *by loan*. It further appears, from the bill and other documentary evidence, that he was in a very embarrassed pecuniary situation, having judgments against him to a considerable amount, which he could not pay. He says, (p. 13) "Your orator found a party in Pittsburg, *who was willing to advance* the money necessary," &c., and your orator *made an engagement with* him, *which would in the month of July*, 1859, *have secured the payment* of said incumbrances, but for the inequitable interference," &c.

What "engagement" did he make? Loans to that amount, are not often made, especially to men in his situation, with-

out substantinl security. He does not tell exactly what security he was to furnish, but following the narrative along, we come (p. 14) to the following significant passage, viz:—

"And your orator further shows that he went to Davenport with his friend from Pittsburgh, before referred to, on *the day previous to the date fixed for the sale of said farm*, as designated in the advertisement of said Charles Powers, as aforesaid, with means to pay the amount due on both said trust deed and mortgage incumbrances, and that his object in going there at that time was for the purpose of paying and discharging these two incumbrances; *that your orator, immediately, or very soon after his arrival, called on said LeClaire*, and informed him he had come prepared to pay said trust deed and mortgage claims, *and wished to know of him, LeClaire, whether he, LeClaire, would then give up to your orator the said Davenport mortgage and notes, if your orator would give him satisfactory security or indemnity for the payment of certain judgment incumbrances on said Rosebank farm, within the time specifed by the said compromise agreement.* Your orator could have readily furnished such security to said LeClaire, *and was anxious to be permitted to do so, and get possession of the Davenport mortgage and notes*, to be enabled to take such action in the premises as his interests might have required; but said LeClaire declined to give any answer in the premises, except to refer your orator to said John P. Cook," &c.

For what purpose was this account of the application to LeClaire for the Davenport notes and mortgage, in itself no way material to the complainant's case, and wholly without evidence to support it, introduced into the bill? Apparently for the purpose of connecting LeClaire with John P. Cook, and fortifying the claim that the latter, in the matter of the sale of the farm, acted as LeClaire's attorney. But in his eagerness to do this complainant has unwittingly let out the fact, in immediate connection with his purpose to pay off the trust deed and mortgage, that just at that juncture he was for some purpose exceedingly anxious to get hold of the A. H. Davenport securities, without compliance with the conditions on which he was entitled to receive them. *Why*

did he want them so much just then? Because without them he could not get the money he had bargained for, from his "Pittsburg friend," to pay off the trust deed.

This application to LeClaire (made, as he tells us, immediately upon his arrival at Davenport,) failing, what does he next resort to? He applies to Powers to advance the money needed in addition to what he was to get from Pittsburgh, to clear off all the incumbrances, so as to entitle him to claim the A. H. Davenport securities, under the agreement with LeClaire.

Referring again to the bill, we find it stated (p 14 at foot) "that on the day designated, and near the hour designated, by the said trust deed advertisement, for the sale of said farm, he and his said friend from Pittsburgh called at the office of said Powers to pay said incumbrances, when said Powers informed your orator and his said friend that said drafts would be satisfactory for the payment of the same, and that said sale should not take place.

Your orator then commenced a conversation and negotiation with said Powers, for the purpose of inducing him to assist your orator with means, on securities furnished by your orator, for the purpose of paying certain judgment incumbrances on said Rosebank farm, amounting to $3,500, *or thereabouts.* Whilst your orator and said Powers were conversing on this latter subject, a note, or writing, was handed to said Powers," &c.

It would seem, on the complainant's statement, to have been rather premature to propose a new loan to Powers before actually discharging the old ones; but it was not premature in fact; the new loan being vitally essential to enabling complainant to obtain the means to pay the old one, and was doubtless so understood by both parties.

Attention is now again invited to complainant's version of the matter, in his answer and cross-bill, in Davenport *v.* May (p 135 near top), where he says "that on the day of the said sale this defendant *was negotiating with said Powers, as to the payment of the trust deed and mortgage,*" &c., by which it will appear that complainant has again improved on his former allegations, in his bill on this case. What need of "negotiating," if he had the money, or means

to procure the money, absolutely under his control, and immediately available? It quite plainly appears that things had not quite reached this pleasant and satisfactory position, from the complainant's own statements, taken together.

Turning now to the *testimony* bearing on this point, coming as it does from complainant's confidential friends, we shall find the matter left in no doubt whatever. John Andoe, who appears by his deposition to be a friend of complainant's of forty years standing, and his former partner in business, testifies thus, on direct examination by complainant (p 359): "I was aware that he, said May, had negotiated some $15,000 of railroad stock, in Pittsburg, Pa., for the purpose of appropriating the proceeds to the removal of some mortgage on Rosebank farm. I understood from the parties who were loaning the money, that they had made up $9,000, and sent it on to Davenport, by a gentleman from Pittsburg, to be paid over to some parties here, for the purpose of removing mortgages on Rosebank farm, *on condition that he got, or was handed over, three notes, for $7,000 each, from Adrian H. Davenport to LeClaire, and indorsed by LeClaire, as collateral. The gentleman told me that he could not get the notes from the parties having charge of them, and he went home with the money in his pocket.*"

This is no doubt hearsay; but it is called out by the complainant himself, and comes from the lips of his lifelong friend, and there cannot be a doubt of its truth. Immediately following, we find the same witness testifying (p 360) to negotiations which he had with Powers, shortly after the sale, at May's instance, in which the witness offered Powers *further security* that May would pay the indebtedness on the farm, which Powers declined to accept; still farther confirming the idea that May was not able, at the time, to pay the debt.

Next we refer to the testimony of John T. King, complainant's son-in-law, who professes to have accompanied May to Powers' office on the day of sale, and witnessed what took place there. This witness' deposition (whether designedly or not we do not know) was taken in such a manner as to

deprive defendants of all opportunity of effectual cross-examination, having been taken on commission and written interrogatories, so framed as to afford no light whatever as to what was intended to be called out. (See int. 6, and the answer to same, pp. 362—364.) The witness tells his story very artfully, and does his best to conceal what is unfavorable to complainant. Enough, however, leaks out, notwithstanding the advantages for suppressing it, to show that the complainant has grossly misrepresented the facts, in his bill. Thus, the bill avers (p. 15) that "Powers informed your orator and his said friend that said drafts would be satisfactory for the payment of the same," (i. e., of the trust deed and mortgage,) "*and that said sale should not take place.*" This last promise, as alleged, is without qualification or condition. King, who was present, testifies to nothing of this kind, but says (in his long narrative in answer to int. 6, on p. 363, middle of page,) "Mr. Powers invited us into the back office. Mr. Gallagher" (the "friend from Pittsburgh,") "then informed Mr Powers that the checks, or drafts, which he held, called for currency, but that he was instructed by Mr. Scully, Cashier of the Trust Co., in Pittsburgh, to let him know if those drafts were not accepted, and he would make them payable in Pittsburg funds. It was then after two o'clock, *and it was found that the matter could not be settled up that day. Capt. May requested Mr. Powers to postpone the sale for two or three days, until the matter could be properly settled.*" Here is not a word about Powers' willingness to take the drafts, not a word about his promising that there should be no sale: but a *request* from May to Powers for a *postponement* of the sale, to give time for further negotiation; which is *not* stated to have been acceded to. Again, at the end of this answer, on page 364, he says: "The plaintiff did not say much during the interview, at which he was present, in Mr. Powers' back office. *I remember that at one time he and Mr. Powers got at pretty high words about a lack of confidence in regard to the result of a postponement of the sale.*" This does not look much like the state of unalloyed harmony and accord depicted in the bill. *Why* could not the matter be settled

up that day, if nothing was to be done but to hand over the money, and Powers was perfectly willing to take the drafts? What need of "postponing" a sale, which it was understood was not to take place at all? Although the witness entirely suppresses the actual negotiations at this interview, it is plain enough from what he does say that the parties had not arrived at any accord. But still further, as a part of his narrative, on page 364, he details negotiations had between himself and Gallagher and Powers, on the evening of the day of sale, and the next morning, with a view to supersede the sale, in which it appears to have been absolutely essential that money should be advanced by Powers to remove the judgment liens on the farm, in order to enable May to get possession of the A. H. Davenport notes from LeClaire; and Gallagher goes to Cook & Sargent, the custodians of the notes, to ascertain on what terms they can be obtained; from all which it is clear as daylight that the possession of these notes is a *sine qua non* to Gallagher's parting with the $9,000.

The only other piece of evidence on this head, which we think it worth while to refer to, is the sworn answer of defendant J. P. Cook, in which, denying on information and belief the complainant's allegations as to his ability to pay the incumbrances at the time of the sale, he states his information on the subject, derived directly from complainant's "friend from Pittsburg," at the time, viz., that the "friend's" client, at Pittsburg, had agreed to loan May $6,000, taking as security the first two of A. H. Davenport's notes to LeClaire, for $7,000 each; that he [the attorney] had come out to arrange the matter, and was surprised to find that May was not entitled to said notes until all the liens on the farm were removed; and that his instructions were not to let May have the money without the said security. (See page 48).

Let it be remembered that the burden of proof is on complainant to establish his allegations of pecuniary ability to discharge the incumbrance at the time of the sale, and that the foregoing is the evidence on which he is forced to rely, to sustain that burden.

We have discussed this point at so much length, not only because we regard it as lying at the foundation of the complainant's whole case, but because it is a test of the honesty and good faith of his entire claim. He knows, personally, the precise facts as to his situation at that time. If he has sought to impose upon the Court a false or garbled story about it, it ought justly to set the seal of condemnation on his case.

(5). Next, as to the allegation that Dessaint, the purchaser at the trust deed sale, did not in fact pay anything, and did not hold the title for his own benefit, but merely as the tool or instrument of LeClaire.

Aside from the sworn denials of this charge, and assertions of the contrary, contained in the answer of Mr. Dessaint, and of his attorney, Mr. Cook (pp. 71–2, 51–2,) complainant has taken the pains very effectually to disprove it, by his long and searching examination of Dessaint, as a witness; by which it appears that he paid $7,440 on the purchase, by his check for that sum on the State Bank, which check was delivered by him to his attorney, Mr. Cook, who had charge of the business of completing the purchase, and was returned to him by the bank on which it was drawn, after payment thereof; that not having enough money on deposit at the State Bank to meet the check, he drew, on the same day, another check, for $1,640, on Cook & Sargent's bank, where he also kept an account, and deposited it at the State Bank, to make his account there good; that the money paid on the check was his own; that neither LeClaire nor any one else furnished him, directly or indirectly, with a dollar, to be used in the payment, nor agreed to reimburse him any part of it; that he purchased in good faith for his own benefit, intending at the time to improve and occupy the farm as a home; that he had no communication with LeClaire, or any of the defendants, except with J. P. Cook, as his attorney, about the sale; that he knew nothing of any scheme to procure a sale of the farm for LeClaire's benefit, or to prevent May from fulfilling his contract with LeClaire; that he did not know at the time of the sale that such a sale would interfere with, or

prevent, the execution of any contract between May and LeClaire.

(See ints. 75–83, p. 480; 112–130, pp. 483–485; cross ints. 10–36, pp. 501–505.) The check itself, for the $7,440, is produced and put in evidence (p. 231), also Mr. Dessaint's bank book with Cook & Sargent (int. 177, p. 488; exhibit U., p. 232,); also his account with that firm, taken from their books, (exhibit 19, p. 220–222) in both of which he is charged with the $1,640 check; the date thereof (omitted in the former) is given in the latter (p. 222) as July 21, 1859.

The fact that Mr. Dessaint very soon after his purchase became disgusted with his bargain and embraced an opportunity to sell out at a small advance to Ebenezer Cook, does not militate in the least against the trustworthiness of his statements. He is not the first man who has suddenly changed his mind about the purchase of a fancy farm, nor if he should be thought open to the charge of being impulsive, or even fickle, is such a phenomenon anything new under the sun, especially among men of his nationality. His reasons for this sudden change of purpose are explained (cross ints. 33, 34, p. 504), and there is nothing to impugn their sincerity.

(6). We might further weary the patience of the Court, by an exposure at length of the falsity of the complainant's charges (akin to the last mentioned) that the conveyances by Dessaint to E. Cook, and by the latter to George L. Davenport, were colorable merely, without valuable consideration, and made in furtherance of the pretended "conspiracy." It cannot, however, be necessary to do so. In view of the double burden resting upon the opposite party, both as complainant and appellant, to make out his case, and the utter absence (if we are not greatly deceived about the case) of any proof to sustain those allegations, they may well be passed without further notice. It will certainly be time enough to consider them, when complainant shall have laid a foundation, by establishing the existence of the alleged conspiracy, and that the sale of the farm by Powers was the result thereof. We content ourselves with again

calling attention to the testimony of the witnesses, Dessaint, Davenport and J. A. LeClaire, nephew and business agent of A. LeClaire, utterly denying all knowledge and information of any such fraudulent scheme, or of any agency or concern whatever had by A. LeClaire, or any one on his behalf, in the trustee's sale. (Dessaint, cross ints. 12–15, p. 501; 21, p. 502; 25–29, pp. 503, 504; Davenport, cross ints. 29–48. pp. 579–581; J. A. LeClaire, cross ints. 37–52, pp. 454, 455.)

(7). It is alleged in the bill (p. 18) that Geo. L. Davenport, after Powers' death, dismissed his suit to quiet title against May, for the purpose of preventing May from using as evidence Powers' deposition, taken in that suit. In answer to this, we simply refer to the record, by which it appears (p. 147) that the suit was discontinued by written stipulation, on the part of both parties, signed by their respective attorneys, and by which May, in terms, withdraws his answer and cross-bill. Of course, his cross-bill (which sets up substantially the same matters contained in the bill in this case) could not have been discontinued without his own concurrence. The averment, as to honesty and sincerity, is on a par with the rest of the bill.

We do not propose to waste time and labor, in any further argument on the facts in this case. Perhaps an apology is due to the Court, for having been unnecessarily tedious on the subject. If so, that apology must be found in the fact that eminent counsel have been induced to lend the weight of their names and abilities to the complainant's side. However powerful such assistance, the idea is inadmissible that in this Court a cause can be carried against law and evidence, by the mere weight of distinguished counsel. Our effort, therefore, has been directed chiefly to aiding the court in extracting the case from the confused and cumbrous record. We feel assured that once understood it constitutes in itself the most effective argument for the appellees.

IV.

The only point of law which occurs to us as worth noticing in the case relates to the admissibility of Powers' deposition, taken very informally, and bearing marks on its face of incompleteness, in the suit of Davenport *v.* May, in the Scott County District Court. We do not consider it very important whether it is admitted or not; but we submit that it is clearly incompetent. In order to render a deposition taken in another cause admissible, both the issues and the parties in that cause must have been the same.

1 Phill. Ev. (4th Am Ed. 1859) 389-391, and notes, 111, 11 , and cases cited.
2 ib., 215-217.
2 Dan., Ch. Pr. (3d Am. Ed) 865-868.

Neither of these conditions appears to be fulfilled in this case. When this deposition was taken, May's answer and cross bill had not been filed; and the matter set up in his present bill had been in no way or degree introduced into the case by pleading. There were in fact *no* issues in the case at that time. The examination of the witness seems to have been purely of a fishing character, to see what could be developed, which might serve as material for subsequent pleading; and there was no cross-examination, and nothing on which to found one.

As to parties, none of the present defendants, except Davenport in his private capacity, were parties to that suit; hence they were deprived of the opportunity to cross-examine; a matter the more material, since there was in fact *no* cross-examination. It is perfectly plain that the deposition cannot be received as evidence against *them*. The court below allowed it to be read (subject to objection as to competency of contents) against Davenport only. It is really of no consequence whether it be admitted to that extent or not; but it is submitted that, as matter of law, it is not admissible at all; that it must be evidence against *all* or *none*. The *gravamen* of the bill is one entire charge, affecting all the defendants. Were it otherwise the bill would be multifarious. The case cannot be tried by piece-meal, as to each defendant separately, on evidence competent as against

him, but not against his co-defendants. Each is interested in exonerating the others as well as himself, and is entitled to disprove the charge as against them, and to cross-examine witnesses adduced to prove it. Suppose a deposition had been taken in this cause, on notice to only one defendant, and without appearance by the others; would it not be suppressed absolutely? No distinction can be taken between such a case and the present. The principle on which depositions in another cause are admitted in evidence is the same as that on which the verdict and judgment in such cause would be admitted, viz: that they must be admissible against *both* parties, or they will be admissible against *neither*. In this case, defendants generally could not offer this deposition *against* May, if they desired to do so, only one of them being a party to it. Hence he cannot offer it against *them*. The attention of the Court is specially directed on this point to the following cases:

Boudereau *v.* Montgomery, 4 Wash , C. C 186,
Harrington *v.* Harrington, 2 How (Miss) 701, (715–17)
Boardman *v.* Reed, 6 Pet., 328, (340, 341,).
Rowe *v.* Smith, 1 Call., 487.
Gould *v* Gould, 3 Story, C. C., 516, 541

It is respectfully submitted that the decree appealed from is clearly right, and should be affirmed, with costs.

JOHN. N. ROGERS,
(With whom M. H. CARPENTER,)
Counsel for Appellees.

Supreme Court of the United States.

DECEMBER TERM, 1870.

JAMES MAY, Appellant,

vs.

MARGUERITE LE CLAIRE and others.

No. 7[illegible]

Brief

This is an appeal from the decree of the c[illegible] dismissing the complainant's bill.

The case, as stated by the complainant, is—

That the complainant and Antoine Le Claire, on the 8th March, 1859, entered into an agreement as follows:

The complainant to release all claims against Le Claire, and convey to him, free from incumbrance, one hundred and forty-three acres of land, called the "Rosebank Farm," within twelve months; Le Claire to release all claims against the complainant, and convey to complainant his interest as mortgagee in certain lands sold to Davenport; that is, to assign to complainant the mortgage given by Davenport, and convey certain lands owned by Le Claire, three miles below the town of Le Claire, in Iowa, and the lands owned by Le Claire on the Iowa main land, near the other piece of land to be conveyed.

At the date of the agreement the Rosebank Farm, which complainant agreed to convey to Le Claire freed from its incumbrances, was incumbered—

1. By a mortgage to one Kettell, for $3,125, payable November 1, 1867.

Supreme Court of the United States.

DECEMBER TERM, 1870.

JAMES MAY, Appellant,

vs.

MARGUERITE LE CLAIRE and others.

No. 72.

Brief for Appellees.

This is an appeal from the decree of the court below dismissing the complainant's bill.

The case, as stated by the complainant, is—

That the complainant and Antoine Le Claire, on the 8th March, 1859, entered into an agreement as follows:

The complainant to release all claims against Le Claire, and convey to him, free from incumbrance, one hundred and forty-three acres of land, called the "Rosebank Farm," within twelve months; Le Claire to release all claims against the complainant, and convey to complainant his interest as mortgagee in certain lands sold to Davenport; that is, to assign to complainant the mortgage given by Davenport, and convey certain lands owned by Le Claire, three miles below the town of Le Claire, in Iowa, and the lands owned by Le Claire on the Iowa main land, near the other piece of land to be conveyed.

At the date of the agreement the Rosebank Farm, which complainant agreed to convey to Le Claire freed from its incumbrances, was incumbered—

1. By a mortgage to one Kettell, for $3,125, payable November 1, 1867.

2. By a trust-deed to one Powers, to secure $6,550, payable May 1, 1858; this deed containing a clause authorizing Powers, the trustee, to sell the land, if the amount was not paid at maturity.

That, in pursuance of this agreement, the complainant executed the proper deed to Le Claire, and delivered it to Cook & Sargent, bankers, and Le Claire delivered the Davenport mortgage and notes to the same firm, the delivery to be made by Cook & Sargent to the respective parties when the complainant should pay off the incumbrances on the "Rosebank Farm," and Le Claire entered into possession of the "Rosebank Farm."

The bill is brought to compel a specific performance of this agreement on the part of Le Claire.

It is not pretended by the complainant that he ever did pay off the incumbrances on the Rosebank Farm, so as to be entitled to a specific performance by Le Claire, according to the terms of the agreement; but, as an excuse for such non-performance, the bill alleges a state of facts relied upon to show that the complainant was prevented from performing his part of the agreement by the fraudulent conduct of Le Claire.

These facts are, that after the agreement was entered into, the complainant made an arrangement with a friend in Pittsburg to advance the money necessary to pay the amount secured by the trust deed; and that the payment would have been made "*but for the inequitable interference and fraudulent conduct of said Le Claire, and the other defendents to this writ, especially of the defendent John P. Cook, an attorney and counsellor of said Le Claire.*"

That John P. Cook, acting in pursuance of this conspiracy, by his persuasion and influence, procured Powers to advertise the property for sale under the trust-deed, while May was at Pittsburg. That Cook further requested and urged

Powers not to influence any bidders to come to the sale, stating that either he or said Dessaint would be present to bid and that it was agreed between Cook and Powers that if either Cook or Dessaint became the purchaser at the sale, Cook should pay Powers the whole amount both of the trust-deed and mortgage.

That May went to Davenport with his "friend" (name unknown) from Pittsburg, on the day before that fixed for the sale, with means to pay off the trust-deed and mortgage, and for the purpose of paying them. That he then saw Le Claire and told him he had come prepared to pay those incumbrances, and asked *whether Le Claire would give up to him the A. H. Davenport mortgage and notes, on receiving security for the payment by May of certain other judgment incumbrances on the farm;* as to which Le Claire referred him to John P. Cook. (Record, p. 14.)

That the means provided by May for the payment of the trust-deed and mortgage were bankers' drafts. That on the day, and near the hour, advertised for the sale of the farm, he and his Pittsburg friend called on Powers to pay said incumbrances, and were informed by Powers that the drafts would be satisfactory, and that the sale should not take place. That *while May was in conversation with Powers, for the purpose of inducing him to furnish the means to pay certain judgment incumbrances on the farm* for about $3,500, a note was handed to Powers, who then stated that he was called out on other business, and went away. That the note was written by John P. Cook, to induce Powers to withdraw clandestinely from the company of May, and go up to the court house and sell the farm, of which May was ignorant. That Powers accordingly went to the court house in Cook's company (without May's knowledge) and there sold the farm under the trust-deed, subject to the mortgage, at auction, and that it was struck off to Dessaint for $5,000, and was conveyed by Powers to him, in pursuance of the sale.

As between the complainant and Le Claire, it is manifest the whole case rests upon this allegation of conspiracy between Le Claire and the other defendants, to prevent

complainant from paying off the incumbrance of the trust-deed.

This allegation is flatly denied by all the defendants, answering, as the bill expressly required them to answer, on oath. The burden, then, of establishing this foundation-fact is upon the complainant; and without it the cause falls.

There is absolutely no evidence whatever even tending to bestalish this conspiracy. Nothing that can, as it seems to me, be candidly relied upon for that purpose.

It is not pretended that Le Claire owned the trust-deed, or had any interest in it, as a creditor. The manifest attempt of the bill to connect Le Claire with the conduct of those who had charge of the sale under the trust-deed, by stating that when complainant applied to Le Claire to enter into a new agreement, to deliver the deed to complainant on payment by him of the incumbrance of the trust-deed, and giving security to pay off the other incumbrances, and that Le Claire referred him to John P. Cook, as his attorney, fails, because complainant was not applying to Le Claire in regard to the sale under the trust-deed, but in regard to a totally different subject, viz, the modification of the agreement between complainant and Le Claire.

And when Le Claire referred him to Cook, as his attorney, it, at the most, merely shows that Cook was his lawyer in regard to his rights as against complainant. There was nothing in this to connect Le Claire with totally independent transactions which Cook might have in charge as counsel for other parties.

If the complainant could make out that the sale under the trust-deed was fraudulent and ought to be set aside, then, on a proper bill filed against those who conducted and profited by the sale, he might have a decree vacating the sale.

After which he might redeem from the incumbrance of the trust-deed.

And then he might, on payment of the other incumbrances, exhibit a bill against Le Claire to compel a specific performance of the agreement.

But the only pretense for joining these two suits in one is, that all the parties defendant in both transactions had colluded together to procure a fraudulent sale under the trust-deed, as a means of preventing the complainant from complying with his agreement with Le Claire. Without this allegation the bill would have been multifarious. With the allegation the bill is good; but when the proofs are taken, if this connecting fact be not established, the suit falls. It is not established.

Therefore the complainant, even if he had established—

(1.) That the sale under the trust-deed was fraudulent; and,

(2.) That he had paid off all other incumbrances, and was ready and willing to pay off that of the trust-deed, and the year fixed by the agreement had not yet expired, so that he was entitled to a specific performance as against Le Claire, could not maintain this suit; because no man can prosecute two suits on one bill.

When the allegation of confederacy between all the defendants, which alone rescued the bill from a demurrer for multifariousness, fails for want of proof, the suit must fail; for, otherwise, a man might prosecute a dozen totally independent suits on one bill, by merely inserting in the bill, which need not be sworn to, false allegations of confederacy between all the defendants.

I.

As to appellant's second point, (p. 21):

(1.) The *facts* are, that the trust-deed authorized the trustee, in case of default in payment of the debt, "to advertise

said property in some newspaper printed in the county of Scott aforesaid at least twenty days, and sell the same at public auction, at the court-house door, in the city of Davenport, to the highest bidder, for cash, *in parcels and tracts of such size as the said powers shall deem most advantageous* for the said party of the first part," &c. (Record, p. 114.)

In conducting the sale the trustee first invited bids for any parcel of the land less than the whole, on which any one present might wish to bid. No such bids being made, he then offered and sold the whole premises in a body.

(Testimony of R. D. Congdon, ints. 50–52, p. 386; J. A. Le Claire, int. 379, p. 445; int. 389, p. 446; bill, pp. 15, 20.)

It appears from the testimony of J. W. Harrison, an experienced dealer in real estate at Davenport, and familiar with the value of land in Salt county, and examined on this subject *by the complainant*, that a sale of the land in a body, in July, 1859, *was, in fact, more advantageous for May than a sale of it in parcels.*

(Testimony of Harrison, int. 1, p. 459; ints. 18–20, p. 461; cross-ints. 1–5, pp. 461, 462.)

Harrison's is the only testimony on this point of the least weight.

The witness Wilson undertakes to give a contrary opinion; (ints. 39–40, p. 405;) but he does not pretend to be an expert or to have any special knowledge on the subject; and it is apparent from his cross-examination (cross-ints. 1–6, p. 405) that by reason of his absence from the country and want of information his opinion is worthless.

Further, the property was improved, and always occupied and used as *one entire farm.* It is so designated and described by complainant himself in his bill and by all the witnesses. To this day it has never been subdivided or used otherwise than as a farm. The only purpose for which it is suggested that it could have been sold to advantage in parcels was for building lots, on account of its proximity to the city of Davenport. (See bill, p. 19.)

It is matter of public notoriety, that in the year 1859, owing to the depressed condition of western towns, consequent

on the financial convulsion of 1857, there was no sale whatever for property of that kind in their environs.

(2.) As to the *law:*

1. If the bill had been based on this point *only*, (viz, failure to sell in parcels,) it would have been clearly *multifarious*. Le Claire and his representatives could by no pretext have been properly made parties to a bill to set aside the sale on *this* ground; nor could any of the *other* defendants have been joined in a bill against Le Claire for specific performance of his agreement with May.

But complainant cannot *evade* this rule by merely *alleging* (falsely) a *conspiracy* between those parties, (so as to shield his bill from a demurrer,) and then, without *proving* any *joint* case, prevail against *each* or *either* party, by proof of a *separate* case or cases against them respectively. He must prevail on a case proper for *uniting* those parties as defendants, or not at all.

2. The construction given by appellant's counsel to the terms of the trust-deed is untenable. It makes the language frustrate its own declared object, viz, the advantage of the grantor in the deed. It is argued that the trustee was *imperatively required* to sell "in parcels," but was left free to exercise his discretion as to the *size* of the parcels. According to this, the trustee was bound on the one hand to sub-divide the land, on selling, although it should be *perfectly clear* (as the fact was) that a sale of it in a body would be "most advantageous for the said party of the first part;" and, on the other hand, was at liberty to exercise his discretion as to *size* of parcels, by selling half an acre separately, and the rest in a body.

The true meaning is, that the trustee was to be *at liberty*, (*not bound*,) to sell in parcels less than the whole, *provided, in his opinion*, such sale would be advantageous for the grantor, in which case it would be necessarily also advantageous to the *cestui que trust*, leaving him at liberty to sell in a body, if that mode should appear most advantageous; the controlling consideration, as to the mode of sale, being the "advantage"

of the parties interested therein. The language is, *not* "in *parcels* of such size," &c., but "in parcels *or tracts* of such size," &c. If the word "parcel" necessarily means less than the whole, "tract" does not.

Singleton *vs.* Scott, 11 Iowa, 589, 596.

3. The trustee's duty (if any) as to selling in parcels was discharged by his first offering to sell in parcels without obtaining any bids. This has been substantially held by the supreme court of Iowa in a very late case. (Burmeister *vs.* Dewey, 27 Iowa, 468.) This was a sale, under foreclosure, by the sheriff, of several hundred acres in one body, which *included* the mortagor's homestead of forty acres. The statute of Iowa required that the sheriff should "exhaust" all the other property before selling the homestead. It was held that the sheriff, having first offered to sell the other land in forty-acre tracts without obtaining bidders, was then at liberty to sell the whole in a body, notwithstanding said statute. It adds force to this decision, that the court had previously held sales of distinct parcels of land in a mass or lump by the sheriff irregular.

Boyd *vs.* Ellis, 11 Io., 97.
Lay *vs.* Gibbons, *ib.*, 377.

4. The legal title being in the trustee, his sale and conveyance (though not in conformity to the terms of his power) passed the legal title to Dessaint, the grantee, leaving in May a mere *equity* to have the sale set aside on application to a court of equity. This *equitable* claim cannot prevail against a *bona fide* purchaser for value, who has obtained the legal title. E. Cook and his grantee, George L. Davenport, are such purchasers. They were not present at the sale, and there was nothing in the documentary evidence of title showing a violation of duty by the trustee in making the sale. The defense of a *bona fide* purchaser is expressly set up by them both in their answers. (Pp. 61, 65.)

II.

As to the third point of appellant's brief, (page 24,) and stated thereon to be "the main question," viz: That May is entitled to specific performance, or to a *modified* performance, of his contract with Le Claire, *in the absence of any fraud or wrongful conduct on Le Claire's part.*

(1.) *Facts* bearing on this point:

There is no evidence whatever nor any *attempt* to prove that Le Claire was indebted to May at the time the agreement was made between them; an allegation which is fully denied by the answers. (Answer of George L. Davenport, executor, p. 74; answer of Marguerite Le Claire, executrix. p. 78.)

There is nothing on the face of the agreement itself (drawn up in the form of a proposition by May himself, and to be taken most strongly against him) recognizing such indebtedness. *Both* parties agree to release all claims on each other. (See agreement, Record, p. 8.) The evidence is that Le Claire always denied such indebtedness, and was induced to sign the agreement to get rid of May's importunity. (J. A. Le Claire's dep., int. 28, p. 452.)

There is no evidence whatever that the actual value of the property agreed to be conveyed by Le Claire to May was greater than that to be conveyed by May to Le Claire, nor *what* such value was. It had, indeed, been sold by Le Claire to A. H. Davenport, in the spring of 1857, when the speculative fever at the West was at its height, for the outrageously-inflated price of $35,000, *entirely on credit.* The property was mainly unimproved, and consisted largely of vacant town lots in the now defunct town of Le Claire. (Evidence of A. H. Davenport, cross-ints. 15–21, pp. 409, 410.)

After the bubble burst, in 1857, the property depreciated indefinitely in value; in fact *had no* value capable of being estimated. (Same witness, ints. 14, 15, 16, p. 409.) Davenport, the purchaser, was unable to pay the purchase-money, and had no property out of which it could have been col-

lected, and never has had any since. (Same witness, cross-ints. 2–9, p. 408.) This was the state of the case *at the time of the agreement between May and Le Claire*, and continued to be such.

No inference, therefore, can be drawn from the value of the property that Le Claire regarded himself as under obligations to May.

After the expiration of the year within which May was, by the terms of his agreement with Le Claire, to fulfill said agreement on his part, viz, March 27, 1860, a written agreement was made between Le Claire and A. H. Davenport, (Exhibit L., p. 107,) by which it was agreed, in substance, that Le Claire should take back the land he had sold to Davenport, subject to the fulfillment of all contracts for the sale of portions thereof which had been made by Davenport; that this should be accomplished by an amicable foreclosure of Davenport's mortgage to Le Claire, and that Le Claire, in being thus reinvested with title, should release Davenport from further liability for the purchase-money. This agreement was carried into execution, a decree of foreclosure obtained, (see record of entire proceedings, pp. 147–168,) and the property sold under the decree and conveyed by sheriff's deed to A. Le Claire, in his lifetime, viz, May 18, 1861. (Evidence of J. Thorington, ints. 5–12, pp. 463, 464.) By these proceedings the fee simple title was vested in A. Le Claire, which title has passed under his last will to the various devisees therein named in undivided shares. (See will p. 39, *et seq.*) For the number and names of these devisees see complainant's bill of review, (p. 41.) Of these very numerous persons, only some five or six are before the court as parties in this cause, the remainder being resident out of Iowa, and never having appeared nor been served. (Order of revivor, p. 88.)

As to the "Rosebank farm:" Appellant's counsel are wholly mistaken in their statement (brief, pp. 27, 29) that Le Claire received a deed of the farm from May.

The plaintiff in his bill alleges that he executed such a deed, and "by a verbal agreement between him and said Le

Claire, he, on or about the 10th day of March, 1859, deposited said deed with Cook & Sargent, bankers, * * * with the intent and understanding that said deed should be delivered to said Le Claire * * * when your orator should have released and removed the incumbrances from said Rosebank farm, as provided for by said compromise arrangement and agreement." (P. 12.)

There is no proof even of *this* allegation of the delivery of the deed as an escrow, much less of an actual delivery to or acceptance by Le Claire.

As to possession of the farm, Antoine Le Claire (who had no children) had a favorite nephew, Joseph A. Le Claire, who had been brought up from childhood in his house, and acted when grown to manhood as his general business agent. (Evidence of J. A. Le Claire, ints. 1–9, p. 414.)

He took possession of the farm in March, 1859, shortly after the agreement between May and Le Claire, being told by A. Le Claire that he could work the farm for his own benefit that year.

He placed on the farm as tenant one Navin, who was to cultivate it "on shares." Navin remained on the farm till March, 1860. The crops put in by him being growing and partially gathered in July, 1859, when the sale under the trust-deed occurred, the purchaser at that sale did not make claim to them, apparently considering he had no legal right to do so. (Evidence of J. A. Le Claire, ints. 82–94, pp. 419, 420; D. Navin, pp. 458, 467, 468, 470; L. C. Dessaint, ints. 48, 49, p. 511.)

In the following winter George L. Davenport, who had then become the owner by mesne conveyances under the trust-deed sale, notified Navin to quit possession, (G. L. Davenport, cross-ints. 51, 52, p. 582,) and in March, 1860, rented the farm to George Wilson, to whom Navin gave up possession. Wilson remained in possession for two years, until March, 1862. (Geo. Wilson, ints. 20–26, p. 403; G. L. Davenport, cross-int. 57, p. 582.)

Wilson paid his rent for the first year to G. L. Davenport; for the second year he paid it to J. A. Le Claire, in the

spring of 1862, under pressure of legal proceedings. (J. A. Le Claire, ints. 105, 106, *et seq.*, p. 421.) This was in consequence of the following transactions: Joseph A. Le Claire (who appears to have been of a rather grasping and selfish character) had importuned his uncle to buy this farm for him. In the fall of 1860, in order, apparently, to bring his uncle to terms, he refused any longer to continue to transact his business. This resulted in a written agreement between them, dated November 21, 1860, (Exhibit F, p. 225,) by which A. Le Claire, accepting his nephew's written proposition, agrees, in consideration of the latter's returning to his service and continuing therein faithfully during the uncle's life, to convey to him "the May farm," to pay his debts, &c. In order to fulfill this agreement, A. Le Claire made a verbal agreement with George L. Davenport to purchase the farm from him, and to pay for it, by paying the outstanding notes of Davenport, given by him in renewal or substitution for the notes of E. Cook, indorsed by Davenport, which Davenport had assumed to pay, as the consideration for Cook's conveyance of the farm to him, amounting to $10,000, and interest. Both these agreements remained unfulfilled at Le Claire's death. They were both carried into execution afterwards, in February, 1862, by mutual agreement between A. Le Claire's executors, G. L. Davenport, and J. A. Le Claire. The last named party at the time held in his hands valuable securities and money, belonging to his uncle's estate, which he refused to give up to the executors until his claims were settled.

At the special instance of Mrs. Le Claire, the widow, and one of the executors, the agreements above specified were carried into effect, by Mr. Davenport's conveying the farm to J. A. Le Claire's son, (at the father's request,) the estate of A. Le Claire, in consideration thereof, paying off the $10,000 notes of Davenport, and J. A. Le Claire surrendering the securities he held to the executors. This transaction took place nearly a year after the commencement of this suit. It is not mentioned or referred to in any of the plead-

ings. The facts stated fully appear, without any contradiction, from the following evidence:

(Exhibit F, p. 225; exhibit No. 26, p. 128; George L. Davenport, ints. 447–494, pp. 566–571; cross-ints. 58–77, pp. 583–585; ints. 167–216, pp. 603–608; J. A. Le Claire, ints. 150–328, pp. 425–441; George Wilson, ints. 29–33, p. 404; cross-ints. 10, 11, p. 406.

(2.) *As to the law.*

It is not very clear, from appellant's brief, on *what ground* the right to relief, *in the absence* of any fraud on the part of De Claire, is intended to be placed. There seems to have been some uncertainty on this point in the mind of the counsel who drew the brief, and hence there is a manifest blending (not to say confusion) of various and not very consistent propositions. Thus, on page 27, paragraph 4, the idea of *some sort* of wrongful conduct or "neglect" by Le Claire (not specified) is still clung to, as though the counsel were loth to abandon it. But on the whole, so far as can be gathered from the language of the brief, under point 3, it seems to assume, as its basis of facts, that the charges in the bill as to fraud or wrongful conduct by the defendants are all unfounded; that the sale under the trust-deed was rightful and valid; that the title derived thereunder is unimpeachable. (See paragraph 6, p. 28.)

And the argument thereon is, substantially, that the agreement being one of "settlement," although May has failed to comply with it on his part, he is entitled to compel Le Claire's representatives to fulfill *their* part of it, he making "compensation" to them for *his* failure; that, because Le Claire's representatives have acquired the title and possession of the farm long after the time allowed May to make title thereto had expired, by a new and independent purchase from a third party, claiming adversely to May, as a consideration *for which they have paid* $10,000 *in cash*, May is entitled to have this treated as substantially a fulfillment of *his* agreement to convey the farm to Le Claire, free from incumbrance, he (May) making "compensation" for the money they have

paid for the land, *not* by refunding it, with interest, *but* by deducting from the property agreed to be conveyed by Le Claire to May an *amount equal in value* to the value of the farm; such values, respectively, we presume (though that is not stated in the brief) to be fixed, and the specific property to be conveyed to May, and that to be retained for "compensation" to be selected by the court! (See paragraph 6, page 28, above referred to.) Such is the argument.

2. Besides the objection of multifariousness, before referred to in answering point 2, which applies in full force to this point also, the case thus attempted to be made in argument is an absolute and total departure from that made by the bill. It not only sets up a case *different* from, but one *inconsistent with* and *contradictory* to, that set forth in the bill. The title to relief therein set up is based exclusively on the wrongfulness and invalidity of the trust-deed sale, mainly on the ground of the fraudulent conspiracy, partially on account of a failure to sell in parcels.

There is not a syllable so much as hinting at an affirmance of that sale; and the purchase of the title derived under it by Le Claire's representatives is not noticed in the pleadings at all. If intended to be relied on, it should have been alleged in a supplemental bill.

But the case now set up in the argument assumes and rests upon the validity of the trust sale, and claims for appellant the benefit of the title derived under it. To sustain such an argument would be nothing short of allowing a complainant to make an entirely new bill by argument on the hearing, and that, too, in the appellate court. This cannot be done.

Shields v. *Barrows*, 17 *How.*, 130.
Harding v. *Handy*, 11 *Wheat.*, 103.
Boone v. *Chiles*, 10 *Pet.*, 177.
Carneal v. *Banks*, 10 *Wheat.*, 181.

3. There is a *defect of parties*, fatal to the relief sought by appellant. The title to the land he seeks to have decreed to be conveyed to him is vested in undivided shares in *all* the

devisees of A. Le Claire, who are very numerous. Only a few of them are before the court as parties. *All* are necessary parties; and no decree for complainant can be made without them.

Shields v. *Barrow*, 17 *How.*, 130.
Coiron v. *Millandon*, 19 *How.*, 113.

4. The argument asks the court to make a new and widely different contract for the parties, and one which there is no reason to believe Le Claire would have ever agreed to. It is urged that it was an agreement of "settlement," but the court are left wholly ignorant what, in fact, was "settled" by it. The construction or effect claimed for it in the passage of the bill quoted in appellant's brief (p. 26, paragraph 8) is wholly untenable. The state of the case is simply this: May claimed that Le Claire was indebted to him, and Le Claire denied this, claiming that May was indebted to *him;* there is no evidence as to which, or whether either, of these claims was well founded. For the sake of getting rid of the controversy, Le Claire was willing and agreed to let May have the A. H. Davenport property and the other land specified, on receiving from May a perfect title to the farm. It was an agreement pure and simple for an *exchange* of specific property. But Le Claire was *not* willing, and never agreed to give May *one dollar in money.* He was entitled to set his own valuation on the respective prices of property, and to refuse to be bound by that of anybody else. Appellant now asks the court to alter the contract, so as to compel Le Claire to give for the farm, instead of the specific property he agreed to give, $10,000 in cash, *and* so much of the said specific property as shall remain after reserving therefrom enough in value to equal the value of the farm; those values to be fixed, not by Le Claire's representatives, but by the court, whether according to values in 1859 or at this time is not stated. In other words, he proposes to throw the contract to the winds, and let the court *arbitrate* between the parties, without any evidence on which to base their award. Le Claire, if alive, might well say, "*Non in hæc fœdera veni.*"

5. The possession of the farm received by Le Claire from May was put an end to by the sale under the trust-deed four months afterwards. Navin, the tenant in occupation, was permitted to remain in actual occupation till the following March, by the mere sufferance of the purchaser and those claiming under him, and was in fact and law *their* tenant from the time of the sale. He gave place to a new lessee, Wilson, in March, 1860, who leased from and paid rent to Geo. L. Davenport, the then owner; and the subsequent possession acquired by Joseph A. Le Claire was under and by virtue of the new and independent purchase of the property from Davenport, who was at the time the owner and in complete and undisturbed possession.

The uninterrupted possession and enjoyment of the property, under the contract with May, relied on as a ground for relief in appellant's brief, has no foundation in fact.

The statement that Le Claire received a deed of the farm from May has already been shown to be unfounded in fact.

6. It is urged that appellant is not chargeable with *laches*. He has certainly shown no great diligence in bringing or prosecuting this appeal; the decree having been rendered in May, 1865, the appeal prayed and allowed in June, 1868, and the case docketed in this court September 30, 1869. The executors were entitled to suppose, from the long delay in appealing, that complainant did not intend to litigate further, and to act on that inference in dealing with the property and settling the estate; and they, doubtless, have done so. Will this court now render a decree which will overturn titles taken on the faith of the decree below, in view of this long and inexcusable delay of three years between the decree and the appeal? For authority to the effect that a party may lose his rights by delay in appealing, short of the time limited by law, see Davis *vs.* Bonar *et al.*, 15 Iowa, 171.

The court are told that everything is *in statu quo*, that Le Claire's representatives still hold the property to be conveyed to May, and nobody will be prejudiced by now awarding

specific performance of this contract ten years and more after the time when by its terms it should have been performed, the delay being in no respect chargeable to the defendants. How do the counsel know such to be the case, and how can the court be assured of it? Nearly seven years have elapsed since the proofs in the case were closed.

But admit that appellant has been diligently litigating with us for the last ten years; about *what* has he been litigating? About an utterly baseless charge of conspiracy and fraud, in a vain attempt to establish which he has taken this enormous mass of testimony, and put the defendants to endless trouble and expense. We are told in the brief that Le Claire cannot be allowed to take advantage of his wrong. The rule is at least equally applicable to the complainant, who cannot be allowed to make a merit of having vexed defendants ten years with a litigation on wholly unfounded charges. If his counsel are now to be allowed to convert the suit into a new and wholly different one, (against which we protest,) they must at least be content to have this new bill date from the time of such conversion, and not claim to have it regarded as brought *nunc pro tunc* of the date of the filing of the original bill.

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M. H. Carpenter
(with J. M. Rogers)
for Appellees.